IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

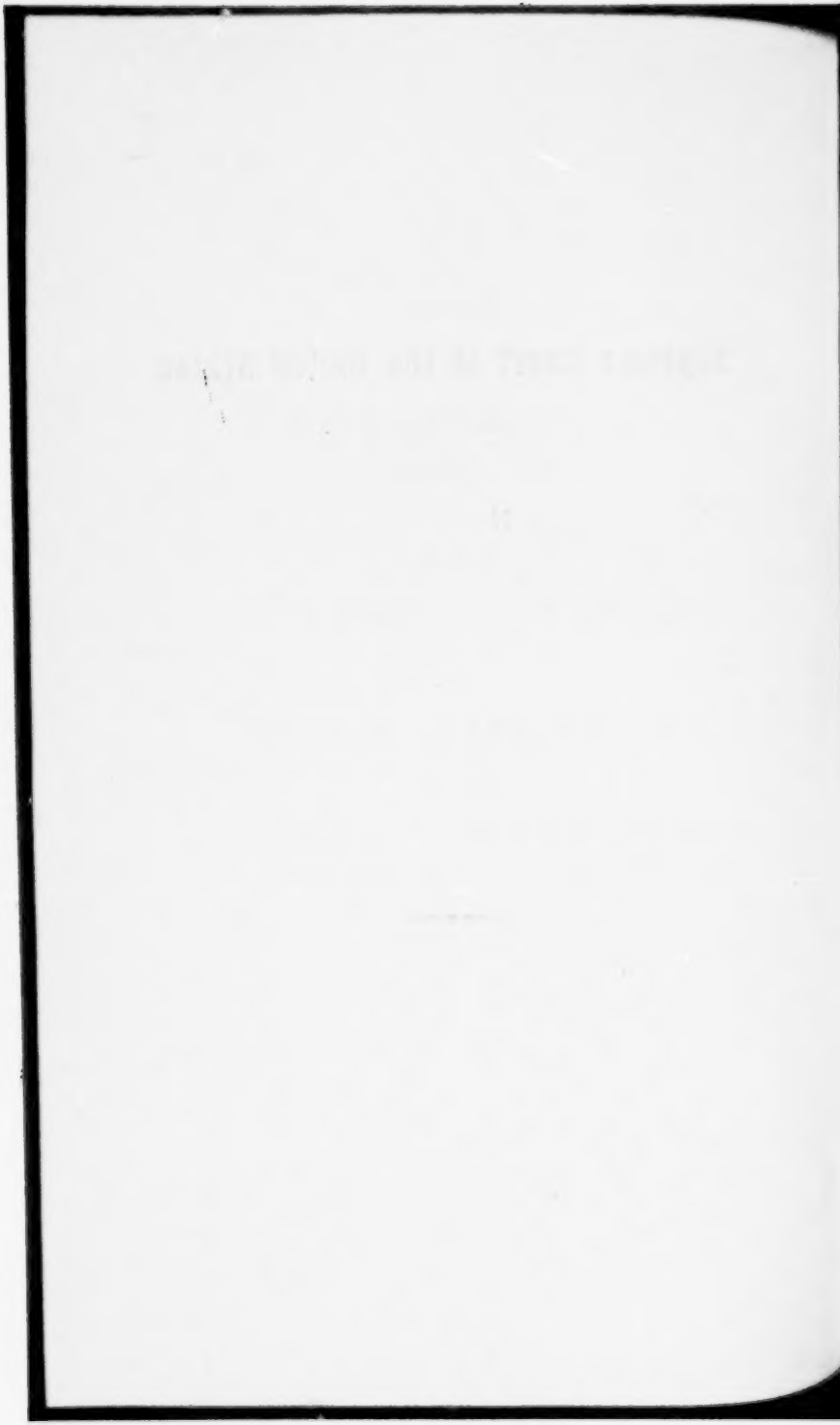
No.

CLAYTON MARK & COMPANY, ET AL.,
Petitioners,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.



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For the Seventh Circuit

No. 8642

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No. 8649 SPANG CHALFANT, INC., ET AL.,

Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

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1492 Pursuant to adjournment yesterday, the hearing in Docket 4452 is now reconvened in court room No. 4 of the Federal Post Office Building, Pittsburgh, Pennsylvania, at 10 o'clock Eastern Standard Time.

Mr. MacIntyre: If your Honor please, we would like at this time to recall Mr. Robert Garland.

Trial Examiner Norwood: Mr. Garland will resume the stand. He is recalled.

ROBERT GARLAND thereupon resumed the stand, and having been heretofore duly sworn, testified further as follows:

1493 *Direct Examination by Mr. MacIntyre.*

Q. Mr. Garland, I show you your testimony of yesterday appearing on page 1487, beginning at line 3 and going through line 24 on that page, in which you have told us that if you didn't have your present practice, figuring prices, that Walker Brothers would walk away with the Philadelphia business, and the Cohoes Rolling Mill Company would walk away with the New York business; do you recall that testimony?

A. I didn't say all of that.

Q. Well, please explain—

A. Just a minute.

Q. You said Cohoes Mill would take a lot of the New York business.

A. Yes.

Q. Now, after seeing that testimony, I would like to ask you this question: Did you predicate that statement upon the thought that they would be able to do that if they did not sell on a basis of Pittsburgh plus freight from Pittsburgh plus freight from Pittsburgh to those places, but instead on a basis of a price at their mill plus freight from their mills to these destinations?

A. Yes; exactly.

Q. The sum total of which would be less than Pittsburgh plus the freight to those destinations?

1494 A. They would naturally make a larger profit under those conditions. They are geographically better situated to the large markets than we are here at Pittsburgh. The large markets are in New York and Philadelphia and Chicago.

Q. And you mean they would not be able to take any

more—just walk away with it, except by making lower prices to the customers there than you would be making from here; is that correct?

A. I mean that at even prices, at even prices they could compete, they could make a price that we couldn't meet in those markets.

Q. That is, lower—

A. When the volume is small and the market is below normal, we couldn't meet the prices that they could make.

Q. In other words, they could make lower prices than you could?

A. They could. I stated that they bought their pipe from Bethlehem, and Bethlehem produces their pipe from what they call Spanish ore from Cuba brought over in their own vessels. Naturally, you get a low price on pipe. They beat us about $6 per ton.

Q. But your testimony at the place I pointed out to you on that page is predicated on the thought if they departed from the system, they could make lower prices than you would be able to make.

1495 A. I don't say they could make them. They would be in a position.

Q. If they did make lower prices, the situation wouldn't be changed?

A. They could make such a price that we couldn't meet.

Q. They are in position to make the lower prices now, aren't they?

A. I don't know. Maybe they are. They might buy their pipe much cheaper than we do.

Q. What you meant by the testimony in the place I pointed out is, if they change their method of quoting and made lower prices, they could get the business that you couldn't get?

A. Yes.

Q. Now, Mr. Garland, do you remember that during June, 1940, an investigator for the Federal Trade Commission by the name of S. L. Williams called on you here in Pittsburgh and asked you some questions?

A. Where in Pittsburgh? Where did he come?

Q. At West Pittsburgh.

A. Never saw him.

Q. Is it your testimony that you never saw S. L. Williams?

A. Never saw him. No one ever saw me at West Pittsburgh in connection with this case.

Mr. Stewart: Off the record.

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1496 What you don't understand is: West Pittsburgh is out in Lawrence County. It is not part of Pittsburgh. Mr. Garland is never out there.

Mr. MacIntyre: I am attempting to determine now whether it was Mr. Garland that was interviewed either in Pittsburgh or West Pittsburgh.

Mr. Stewart: I don't think he understands.

A. I don't ever recollect being investigated in Pittsburgh.

By Mr. MacIntyre:

Q. In either Pittsburgh or West Pittsburgh?

A. No.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Cross examine.

Mr. Stewart: That is all.

The Witness: I have a nephew by the same name; that's all I can say.

Mr. MacIntyre: I will call as the next witness, at the instance of the Commission, Mr. J. M. Barton.

J. M. BARTON, a witness called by and on behalf of the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Barton, what is your business and occupation?

1497 A. President of the Fretz-Moon Tube Company, Inc., Butler.

Q. That is, the Fretz-Moon Company, a Respondent in this case?

A. They are.

Q. How long have you held that position?

A. Since August, '29.

Q. Of what year?

A. 1929; first of August, '29.

Q. And were you connected with the company prior to that date?

A. I was not.

Q. Were you in the rigid steel conduit industry prior to that time?

A. I was not.

Q. Briefly, what are your duties as president of the Fretz-Moon Tube Company?

A. Supervising.
Q. General manager of the business?
A. General manager of the business; supervising.
Q. What do you have to do in connection with sales and shipments, as the general manager of the company?
A. Oh, purely in a supervisory capacity. Nothing of detail.

Q. Tell us something about this Fretz-Moon Tube
1498 Company. It manufactures rigid steel conduit at Butler, does it not?
A. At Butler. At East Butler, to be technically correct.
Q. And over what territory is that conduit sold which it manufactures?
A. The total United States and some South American countries; Central American.
Q. Does it make sales to the trade throughout that territory?
A. Not directly.
Q. How?
A. Not directly.
Q. If it doesn't make the sales directly, in what manner are the sales made?
A. Through Steel & Tubes, a division of the Republic Steel Corporation.
Q. And how long has it effected its sales through—that is, the rigid steel conduit—through Steel & Tubes Division of the Republic Steel Corporation?
A. I can't be accurate whether it was '33 or '34. I think, '33.
Q. Since 1933?
A. Yes.
Q. Did it at one time effect its sales through an organization known as Steel & Tubes, Inc.?
A. Well, under the original set-up, yes; Steel & Tubes, Inc.

1499 Q. During what period of time did it effect its sales through the organization known as Steel & Tubes, Inc.?
A. When I told you '33, I had in mind Steel & Tubes, Inc. That's when we started, and up until the time Republic absorbed them, which I think was in either '38 or '39.
Q. We correctly understand you, then, to say that from around 1933 until some time in 1938 or 1939, Fretz-Moon

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Tube Company effected sales of its conduit through Steel & Tubes, Inc.?

A. That's right.

Q. And that subsequent to 1939 it has effected its sales through the Steel & Tubes Division of the Republic Steel Corporation?

A. That's right.

Q. Pursuant to what arrangement has Fretz-Moon Tube Company effected its sales through those two agencies?

A. I don't understand the question.

Mr. MacIntyre: Please read the question.

(Last question read.)

A. We had a contract relation between Steel & Tubes, Inc., and, naturally, it carries over to the Steel & Tubes Division.

By Mr. MacIntyre:

Q. What is the nature of the contract? Is it an exclusive sales agency contract?

A. Exclusive sales agency, and we consign our
1500 stock to Steel & Tubes and they, in turn, sell in and consign it to the trade.

Q. It is consigned to those agencies after it is produced in Butler, Pennsylvania?

A. I don't understand what you mean.

Q. At what point does the consignment of the stock take place?

A. We ship it to destinations on instructions from Steel & Tubes.

Q. I know, but at what point does the consignment take place? Does it take place in Butler, Pennsylvania, or at some other city?

A. I would say some other city.

Q. In other words, at the time that the conduit is shipped by the Fretz-Moon Tube Company from Butler, Pennsylvania, it remains the conduit of the Fretz-Moon Tube Company; is that correct?

A. It remains the conduit of the Fretz-Moon Tube Company until it is finally sold to the third person we are consigning it to through Steel & Tubes, and once it is loaded on the car—

Q. Do we correctly understand you, now, to say at the time it is loaded on the car at Butler, Pennsylvania, it is consigned to Steel & Tubes?

A. That's right.

1501 Q. And from there on it—

A. It is their liability.

Q. And up to 1933, you made sales directly to the general trade?

A. Through agents, to the trade; yes.

Q. When you say "agents" do you mean salesmen employed by the Fretz-Moon Tube Company?

A. That's right.

Q. Are the prices at which you consign this stock to Steel & Tubes, Inc., and Steel & Tubes Division of Republic Steel Corporation less than the prices at which they resell to the general trade or are those prices the same?

A. I think what you mean is do we bill Steel & Tube at a lower price than they bill their customers.

Q. That is true.

A. Certainly.

Q. And are the provisions for doing that included in some written contract?

A. Certainly.

Q. During this period of 1933 to 1938 or 1939, when you were effecting sales through Steel & Tubes, Inc., did Fretz-Moon Tube Company own and have—that is, own any capital stock in and have any representatives on the Board of Directors of Steel & Tubes, Inc.?

A. No.

1502 Q. Do you know who did own the capital stock of Steel & Tubes during that period of time?

A. No, I don't.

Q. You do know that during that period of time, and since then, that the Republic Steel Corporation has owned at least 50% of the stock of Fretz-Moon Tube Company; is that correct?

A. I don't know it. That is general knowledge. I may know it through publication. I have no direct knowledge of the fact.

Q. You have that as a part of the general knowledge?

A. I presume it is true.

Q. And was it general knowledge as to the ownership of the balance of the stock of the Fretz-Moon Tube Company during that period of time?

A. You weren't asking me about Fretz-Moon. You asked me about Steel & Tubes.

Mr. MacIntyre: Will you please read the question that I asked the witness about the ownership of the capital stock of these companies?

(The record was read.)

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A. Of course, I know that Republic owns half the stock of Fretz-Moon Company, Inc. Yes, I know that.

By Mr. MacIntyre:

Q. And did so own it throughout the period of
1503 time about which you have been testifying; is that correct?

A. That's right.

Q. And who owns the balance?

A. National Supply.

Q. And the National Supply Company—

A. You should qualify that. I am talking only of the common stock.

Q. Yes; capital voting stock.

And you also know that the National Supply Company owns a controlling interest in Spang Chalfant, Inc.; is that correct?

A. I suppose that is correct. That is my information. I don't know that.

Q. But it is your understanding?

A. It is my understanding.

Q. What, if anything, Mr. Barton, have you had to do with the preparation, publication, and distribution of the openly published price cards of Steel & Tubes, Inc., and of the Steel & Tubes Division of the Republic Steel Corporation?

A. In connection with what?

Q. The sale of rigid steel conduit manufactured by Fretz-Moon Tube Company.

A. I authorized the cards.

Q. You authorized it?

A. Yes.

1504 Q. Did you do anything else other than authorize the preparation and publication and distribution of the cards?

A. That's all.

Q. You are acquainted with the provisions that are contained in them?

A. I am.

Q. As to the statements contained in the cards, on the method of figuring the price quotations on the basis of Pittsburgh base?

A. I am.

Q. And the Chicago base?

A. I am.

Q. At the time you authorized the issuance of those cards containing those provisions, figuring delivered price quotations, you knew that at that time competitors of yours, and of Steel & Tubes, Inc., and of Republic Steel Corporation, were issuing cards carrying provisions for figuring delivered price quotations in exactly the same way; is that correct?

A. I know that.

Q. And you have known in that connection that when they issued those cards carrying that provision, at the time you were issuing your cards carrying an exact provision, that delivered price quotations, computed from the cards by you and your competitors, and the competitors of
1505 Steel & Tubes, Inc., were matched at any given destination at a given point of time; is that correct?

A. If and when prices were computed according to the card, that would be true.

Q. Now, have you ever seen any cards published by Fretz-Moon Tube Company, that is, price cards, by Steel & Tubes, Inc., or by the Steel & Tubes Division of Republic Steel Corporation, or any of the competitors of those companies, which provided for prices FOB mill, without being computed from the Pittsburgh basing point price or the Chicago basing point price?

A. I have not.

Q. Can you cite us any instance where you have authorized, or where Fretz-Moon Tube Company, Steel & Tubes, Inc., or the Steel & Tubes Division of the Republic Steel Corporation, have quoted prices on rigid steel conduit FOB the place of the production of the conduit they were offering to sell?

A. I can't cite you specific instances, although I know that they have made such prices.

Q. Well, if you know it, why can't you cite it to us so that we may follow it up and find out what the facts are?

A. Well, it is general knowledge. I can't remember the dates or the circumstances surrounding it, but I know they have been quoted.

Q. Is it your impression or recollection that such
1506 prices have been quoted by your company since the date of the issuance of the Complaint in this case, January, 1941?

A. Since this Complaint?

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Q. Yes.

A. I have no recollection of any prices as recent as that.

Q. Well, what was the date and the most recent price that you have any recollection or any knowledge of that your company quoted FOB its point of production?

A. I can't tell you.

Q. Now, as to these price cards which you have authorized to be issued by Fretz-Moon Tube Company, Steel & Tubes, Inc., and Steel & Tubes Division of Republic Steel Corporation, when sales are made by either of those agencies to buyers of conduit at delivered price quotations provided for in the cards, those agencies receive larger amounts for a given quality and given quantity of conduit near its mill or point of production than from customers located at greater distances; isn't that a fact?

A. That question is involved. I will have to hear it again.

Mr. MacIntyre: Please read it.

(Last question read.)

A. I still don't know how to answer it.

Trial Examiner Norwood: Would the mill net on those nearby shipments be more than shipments to a greater
1507 distance?

The Witness: What?

Trial Examiner Norwood: Read that.

(Last question by Trial Examiner read.)

The Witness: No.

Trial examiner Norwood: Your answer is no?

The Witness: No, that won't be true.

By Mr. MacIntyre:

Q. For example, Mr. Barton, is it your testimony that you do not receive more from your customers as mill nets in Butler, Pennsylvania—from your customers in Butler, Pennsylvania—than you do as mill nets on shipments to your customers in Pittsburgh and in Chicago?

A. That's right, yes, when you bring it down to Butler. But generally speaking, why, that wouldn't be true.

Q. I have asked you about your nearby customers; you have customers in Butler, Pennsylvania, do you nearby?

A. We have one occasionally.

Q. And you receive greater sums of money from him on conduit that you deliver to him, a like quality and

quantity, than you receive from customers located in Pittsburgh and in Chicago? Is that correct?

A. Yes, that's correct.

Q. And isn't it also a fact that you receive greater sums of money for a like quality and quantity of
1508 conduit from customers in Pittsburgh than you receive from customers in Chicago?

A. I don't think that is so.

Q. Why isn't it?

A. We have to absorb the freight to Pittsburgh.

Q. What do you do on your shipments to Chicago?

A. It is sold on a Chicago base, and we absorb a certain amount of freight there.

Q. Isn't it a fact that you absorb more freight on your shipments to Chicago than you do from Butler to Pittsburgh, Pennsylvania?

A. I don't know if it is a fact. The details I am not acquainted with. I don't know the rates.

Q. You are not prepared to answer that?

A. No, I am not prepared to answer it.

Q. Well, why is it that you receive greater sums of money from your customers in Butler, Pennsylvania, for a like quality and quantity of conduit than you receive from your customers in Pittsburgh?

A. The prices would be identical in Butler and Pittsburgh. Our freight to Pittsburgh would be subtracted from our net, that's why.

Q. And that is because of your figuring of delivered price quotations on the basis of the Pittsburgh base price; is that correct?

1509 A. That's right.

Q. Is that correct?

A. That's right.

Q. We have in evidence here, Mr. Barton, as Commission's Exhibit 65, price cards entitled "Steel & Tubes, Inc., Cleveland, Ohio, Sales Agents for Fretz-Moon Tube Company, Inc., Butler, Pennsylvania." All price cards issued by you since Steel & Tubes started making sales to Fretz-Moon Tube Company, and until some time in 1939, have been so entitled; is that correct?

A. That is correct. I think that is correct.

Q. And whether they were to be considered as price cards of Fretz-Moon Tube Company or of Steel & Tubes, Inc., it made no difference, they were so entitled, nevertheless?

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A. That is right.

Q. And since 1939 has there been any change in the title of those cards?

A. I couldn't answer that. I don't know.

Q. I show you Commission's Exhibit 65-T, one of the sales price cards that was presented by attorneys for your company, dated April 1, 1940, on which it is stated it was issued by Steel & Tubes, Inc., sole agents for Fretz-Moon Tube Company, it being card No. 82, and I also show you Commission's Exhibit—that is a portion of Commission's Exhibit 65—which is price card No. 83, on which it
1510 is stated it is issued by Steel & Tubes Division of Republic Steel Corporation, Cleveland, Ohio, sole agents for domestic sales of Rigid Steel Conduit Manufactured by Fretz-Moon Tube Company, Butler, Pennsylvania. Is it your testimony now, Mr. Barton, that the change in the cards that you authorized be issued was made in the form that is indicated by those cards during the dates between April 1, 1940, and November 18, 1940?

A. I authorized cards, but I had nothing to do with the change from Steel & Tubes, Inc., to Steel & Tubes Division of Republic Steel Corporation.

Mr. MacIntyre: Will you please read the question to the witness again? I don't think he understood the question.

(Last question read.)

Mr. Stewart: What was the answer?

(Last answer read.)

By Mr. MacIntyre:

Q. I am asking you not about whether you had something to do with the change, but as to what your testimony now is as to the date of the change. What is that?

A. I have no knowledge. I have no recollection of the change except what I see on the record here.

Q. Well, refreshing your memory and recollection from what you see on the record, what do you say or what
1511 can you say as to the date of the change?

A. The changes are evidently here, we published the card on April 1st and November 18th.

Q. And refreshing your memory and recollection from those cards, will you say that the date of the change in the form of those cards took place during the period of that, between those two dates?

A. The change between them—we changed them at those dates. I don't understand what it is you want to know.

Q. Well, is it—

Mr. Stewart: I don't know, this is all in our answer, and is admitted, as I understand it.

The Witness: I would like to tell you, but I just don't know what you are driving at.

By Mr. MacIntyre:

Q. Is it your testimony now, Mr. Barton, that it was some time after April 1, 1940, when you discontinued your authorization of cards issued by your company or by Steel & Tubes, Inc., which carried the statement issued by Steel & Tubes, Inc., sole agents for domestic sales of rigid conduit manufactured by Fretz-Moon Tube Company? Was it some time after that date?

A. That we authorized what?

Q. A change in the form of the card?

A. I didn't authorize the change in the form of the 1512 card at all.

Q. Well, that you authorized the issuance of cards carrying a change in form; is that right? It was after that date, wasn't it?

A. It was after that date. I authorized the cards; the details of the form of the card, I don't know.

Trial Examiner Norwood: Read the answer.

(Last answer read.)

Trial Examiner Norwood: Do you want to add anything?

The Witness: The details of page 1 of these cards, I had nothing to do with.

By Mr. MacIntyre:

Q. Well, I ask you again, Mr. Barton, whether it is your testimony now that it was subsequent to the date of April 1, 1940, that you discontinued your authorization of cards—your authorization of the issuance of cards—which carried on it the statement that they were issued by Steel & Tubes, Inc? Was it subsequent to that date that the cards that you did authorize be issued carried that statement?

A. Evidently it was.

Q. Well, what can you say in your testimony as to a fact on that?

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A. Nothing. Nothing about it at all.

Q. If you, as president of the Fretz-Moon Tube
1513 Company, in authorizing the issuance of its cards, can't tell us more than that about, who, in your organization, would be able to tell us?

A. I don't know as anybody would be able to.

Q. Mr. Barton, during the period of time from January, 1937, to September, 1937, do you recall having received freight rate bulletins from the Rigid Steel Conduit Association?

A. I don't recall it, no.

Q. Is it your testimony that the Fretz-Moon Tube Company and Steel & Tubes, Inc., did not receive freight rate bulletins from the Rigid Steel Conduit Association during that period of time?

A. No, that is not my testimony.

Q. You say you don't know?

A. I just don't know.

Q. Do you know whether or not that since that date your company have received freight rate bulletins from Charles Donley?

A. Yes.

Q. Can you tell us pursuant to what arrangement that you secure those from Charles Donley?

A. I couldn't tell you with a certainty about it, but I am under the impression—in fact, I am certain about it, without qualifying it in saying so, that we purchase
1514 them direct from Donley.

Q. That is, you purchase them—you pay Donley direct for them?

A. Yes.

1515 Q. In so far as the record shows that your company received any freight rate bulletins from the Rigid Steel Conduit Association, who did your company pay for those?

A. I don't know whether they paid for them or not. I don't know.

Q. For what purpose do you buy from Charles Donley freight rate compilations?

A. We use them to compute the rates, the freight rates in connection with the sale of rigid conduit.

Q. Compute rates for what purpose?

A. Freight rates.

Q. For what purpose? You say in connection with

the sale of rigid steel conduit, but for what purpose in connection with the sale of rigid steel conduit do you compute the freight rates from these bulletins of Mr. Donley?

A. So we can bill the customer. Prepay the freight and bill the customer with that amount.

Q. Have you ever received anything from Mr. Donley in the way of a freight rate bulletin that will show
1516 you the freight in the way of shipments from Butler, Pennsylvania, to any of your customers?

A. I don't know.

Q. Upon what did you base your last statement that you computed freight that you charged the customer?

A. Supposition that that is the way it is handled.

Q. Isn't it a fact that you meant that that statement would apply as to freight from Pittsburgh to the destination rather than from Butler to the destination?

A. I don't know. I never figured the rate. You will get me in deep water—

Q. Isn't it a fact that you buy these freight rate bulletins from Mr. Donley, Mr. Barton, for the sole purpose of figuring delivered price quotations, if nothing else?

A. I think that's right.

Q. Mr. Barton, do you recall that during June, 1940, an investigator from the Federal Trade Commission by the name of S. L. Williams called on you at Butler?

A. I remember Mr. Williams. I don't remember the date.

Q. But you remember the call, and he asked you some questions?

A. That's right.

Q. Do you recall that you told him at that time that the price of conduit was reduced by more than 20% early in 1936 because there had been some nibbling or cutting
1517 of the price on the part of some?

A. No, I don't recall telling Mr. Williams that.

Q. Well, is that a fact?

A. I wouldn't say it was a fact.

Mr. Stewart: I still don't know what was the fact, but it is all right. Go ahead.

Mr. MacIntyre: I believe the record is clear on it.

By Mr. MacIntyre:

Q. Do you recall having told Mr. Williams on the occasion of this visit to your office that the prices quoted by

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those who issued cards in this drastic price cut early in 1936 remained in effect until after the Organization Service Corporation was placed in charge of the management and operation of the commercial activities of the Rigid Steel Conduit Association in the fall of 1936, or shortly thereafter?

Mr. Stewart: Now, what was that question? You certainly go rambling here.

Trial Examiner Norwood: Read the question.

(Last question read.)

Mr. Stewart: May I inquire of counsel: do you mean that he told them it was a drastic price cut or was that your idea about it?

Mr. MacIntyre: Yes.

1518 Trial Examiner Norwood: Do you understand the question?

The Witness: I understand the question is: did I tell Williams that that price obtained after the Organization Service?

By Mr. MacIntyre:

Q. Yes.

A. I don't have any recollection, no.

Q. What is your testimony, now, as to whether or not that those circumstances actually occurred?

Mr. Stewart: Wait a minute. I ask what circumstances you are referring to; the talk with Williams or what?

Mr. MacIntyre: That is, as to the price cut which took place early in 1936 having remained into effect until after the Organization Service Corporation took over the Rigid Steel Conduit Association early in 1937 or late 1936.

Mr. Stewart: All right. Now I understand your question. I didn't understand it before.

A. I couldn't answer without referring to my records. By memory, I don't have it at all.

Q. In other words, you can't tell us?

A. No, sir.

Q. You can't tell us what the facts are?

1519 A. No, sir.

Q. Do you have any recollection that there was a man by the name of Herbert S. Blake, who was president of the Organization Service Corporation, and who took over the management of the Rigid Steel Conduit Association?

Mr. Stewart: Just a moment Is this an assertion that he did take over, or are you asking Mr. Barton?

Mr. MacIntyre: I am asking him if he had any recollection that that was the case?

Mr. Stewart: That he took it over?

Mr. MacIntyre: Yes, sir.

A. Yes sir.

By Mr. MacIntyre:

Q. And do you recall that shortly after Mr. Blake took over such management, that he proposed that the industry adopt a uniform consignment contract for their distributor agents and a uniform specific building contract, by which each manufacturer would give identical price or resale price protection to all of the wholesale customers of such manufacturers?

A. I wouldn't say that Blake proposed that. I think that that was a request from certain members of the industry, that Blake prepare such a contract based on existing contracts throughout the industry.

Q. Is it your testimony now that you did not tell
1520 Mr. S. L. Williams that Mr. Blake did propose such a contract?

A. I have no recollection of telling him any such thing.

Q. Do you recall that the provisions of contracts which were proposed were discussed at many meetings of the Association; that is, the Rigid Steel Conduit Association?

A. That is, of the—

Q. Consigned stock.

A. Consigned stock?

Q. Yes.

A. Yes.

Q. And of the specific building contract form?

A. Yes.

Q. Do you recall whether or not the National Electrical Wholesalers Association proposed what margins that should be included in consignment stock agreement forms?

A. I wouldn't testify that the Wholesalers proposed that.

The Wholesalers, I think, said what they thought would cover their requirements, their cost, but they didn't propose that this be included in there. That was not the proposition to the organization; the Rigid Steel's organization, I don't think; the earlier statement by the Wholesalers.

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Q. Do you recall having told Mr. Williams during 1940 that the Wholesalers or jobbers did make recommendations?

A. I do not.

1521 Q. Which were reported to a meeting of the Rigid Steel Conduit Association held in January, 1937?

A. No.

Q. Do you know whether or not that representatives of the National Electrical Wholesalers Association, and other jobbers of rigid steel conduit, came to an understanding with manufacturers of rigid steel conduit that price changes on rigid steel conduit would be confined to 5%?

A. There never was an understanding; not to my knowledge.

Q. Do you know whether or not the National Electrical Wholesalers Association, or representative jobbers, or representatives of that Association, recommended that such plan be adopted?

A. It is my recollection that they recommended such, yes.

Q. Tell us about when that occurred, Mr. Barton.

A. I can't do it. Don't remember.

Q. You do recall that it occurred at a meeting of the Rigid Steel Conduit Association?

A. No. Don't even recall it that way. Just have a recollection that the jobbers expressed a desire that changes in the price of conduit would not be greater than 5%. When or how, the circumstances, I couldn't tell you. I haven't that recollection.

Q. Weren't you, during that period of time, a member of the Board of Directors of the Rigid Steel Conduit Association?

1522 A. I probably was.

Q. Well, do you know that you were a member of the Board of Directors of the Rigid Steel Conduit Association?

A. Yes, I was. At that time, I don't know.

Q. You have no recollection, no present recollection as to when you became one, or when you ceased to be one; is that correct?

A. I ceased to be one along in October, 1939. I don't know just when I started to be one.

Q. Now, going back to this consignment stock form of agreement which you told us about. You stated that

you thought that it had been proposed by some members of the rigid steel conduit manufacturing industry at some meeting; is that correct?

A. No. I think at a request of some members that Blake took the existing forms and made a composite form that would offer the greatest protection to other members who hadn't a consigned stock form that offered that protection that we thought was vital.

Q. Do you recall any discussion about that? Do you recall that discussions about that took place at meetings of the Rigid Steel Conduit Association?

A. To formulate a contract.

Q. Yes.

A. Yes.

1523 Q. And you recall that after those discussions a revised form of consigned stock agreement was adopted, and used, by members of the industry; is that correct?

A. Most of the members of the industry, yes.

Q. And Fretz-Moon Tube Company adopted one of the revised forms; is that correct?

A. The revised form was submitted to our counsel, who made some alterations in it, and eventually adopted it.

The revised form was almost identical with the form we had been using a good many years. There was no departure from our practice.

Q. But was it in any essential particular different from the proposal made by Mr. Blake, or the one he prepared for the industry?

A. I don't think so. I can't tell you certainly. Blake's proposed form was essentially what we had used for years.

Q. Do you have a copy of that consigned stock agreement form that you put into use after Mr. Blake prepared this one for the industry?

Mr. Stewart: Do you mean does he have it with him or do they have one?

Mr. MacIntyre: Whether he has it in existence.

The Witness: In existence?

By Mr. MacIntyre:

Q. Yes.

1524 A. I think so. I can't say for certain.

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Q. Will you supply us one through your counsel for inclusion in the record?

A. We will be glad to.

Mr. Robison: I think the record will show such a copy was furnished Mr. MacIntyre some time ago.

Mr. MacIntyre: We have one for Fretz-Moon Company, and if it is conceded by counsel for Fretz-Moon Company at this time that such form as we have is the one about which the witness is now talking, I will withdraw my request of the witness.

Mr. Gentholts: That is correct.

Trial Examiner Norwood: Is that agreed to?

Mr. Stewart: Yes.

Mr. MacIntyre: That's all, Mr. Barton.

Mr. Stewart: That's all, Mr. Barton.

Mr. MacIntyre: There is one further question I would like to ask the witness about this consigned stock agreement we were just talking about, before he leaves.

By Mr. MacIntyre:

Q. Showing you Commission's Exhibit 663-A and Commission's Exhibit 663-B, Mr. Barton, that is not the consigned stock agreement form about which you were telling us, is it?

Mr. Stewart: Now, just a moment, please. That sort of leaves me in the dark. What one are you talking 1525 about? The one they adopted after—

Mr. MacIntyre: Blake.

Mr. Stewart: —after Blake came into the—

The Witness: You understand this is not Fretz-Moon's consigned stock agreement.

By Mr. MacIntyre:

Q. You are referring now to—

A. To any of these Steel & Tubes' consigned stock agreements. These are Steel & Tubes, Inc., or Steel & Tubes Division of Republic documents over which I have no control.

Q. I am asking you about 663-A and 663-B. Is that the consigned stock agreement form about which you have been testifying?

A. I don't know.

Mr. Stewart: As I understand it, Mr. Examiner, it is conceded by counsel for Fretz-Moon, and Steel & Tubes,

and Republic Steel Corporation that Exhibit No. 663 is the form of consigned stock contract which was adopted by those companies after Mr. Blake became connected with the Rigid Steel Conduit Association.

1526 Mr. MacIntyre: I have nothing further from Mr. Barton.

Trial Examiner Norwood: Thank you, Mr. Barton. We will take a ten minute recess.

(A recess was taken.)

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. MacIntyre: We call as the next witness at the instance of the Commission, Mr. Benfield.

H. H. BENFIELD, a witness called by and on behalf of the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Benfield, what is your business and occupation?

A. I am manager of conduit sales for the Steel & Tubes Division of Republic Steel Corporation.

Q. And how long have you held that position?

A. Since October, 1937.

Q. What did you do prior to that?

A. Prior to that I was a district manager for Steel & Tubes, Incorporated, in San Francisco.

Q. How long did you continue in that position?

A. Which position?

Q. This position for Steel & Tubes, Incorporated?

1527 A. Well, that isn't quite clear, because I worked in both capacities, for Steel & Tubes, Incorporated. But to make it more clear, I was in San Francisco between the years of 1930 and 1937, up until October.

Q. Until October, 1937?

A. Yes.

Q. And did you continue in any capacity for Steel & Tubes, Incorporated, subsequent to October, 1937?

A. Yes; until Steel & Tubes, Incorporated, became a division of Republic Steel Corporation.

Q. What was the date of that?

A. That was about October, 1939.

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Q. Where were you from October, 1937, until October, 1939?

A. I was in my present capacity for Steel & Tubes, Incorporated, a subsidiary of Republic Steel Corporation.

Q. And where were you located?

A. Cleveland, Ohio.

Q. I believe you said that position was manager of sales?

A. Manager of conduit sales.

Q. Yes, conduit sales.

A. Yes.

Q. And taking as a whole all of these positions which you have told us that you have held since 1930, have you had anything to do with the sale of conduit, other than that manufactured by Fretz-Moon Tube Company at
1528 Butler, Pennsylvania?

A. Rigid iron conduit?

Q. Rigid steel conduit.

A. I first had anything to do with the sale of rigid steel conduit in about 1934, when Steel & Tubes, Incorporated, became the sole sales agents for the Fretz-Moon Tube Company. At that time I was still in San Francisco operating—

Q. Since that date have you had anything to do with the sale of conduit, rigid steel conduit, manufactured by anyone other than Fretz-Moon Tube Company at Butler, Pennsylvania?

A. No, sir.

Q. Do we correctly understand, then, your testimony to be that all of the conduit which is sold by the Steel & Tubes Division of Republic Steel Corporation is manufactured by Fretz-Moon Tube Company at Butler?

A. So far as I know, and as long as I have ever been there, that is true.

Q. And the same applies as to sales made by Steel & Tubes, Incorporated?

A. Yes, sir.

Q. Well, if you were selling conduit in your present position, manufactured anywhere else than Butler, do you think you would know about it?

1529 A. Yes, sir.

Q. What was the date on which you first did sell conduit, or quoted prices on conduit—

A. Are you talking about me personally?

Q. I haven't finished the question.

—or caused quotations to be made on conduit, under a published price card which carried the name Steel & Tubes Division of Republic Steel Corporation?

A. Gee, you got me there. I don't know. But the record would show that, I am pretty sure. Our arrangements with Fretz-Moon began in 1934; I imagine it would appear on one of the price cards of that year.

Q. I am showing you, Mr. Benfield, portions of Commission's Exhibit 65, one of which is price card No. 82, dated April 1, 1940, issued by Steel & Tubes, Inc., sole agents for domestic sales of rigid steel conduit, manufactured by Fretz-Moon, and another one designated as card 83, effective November 18, 1940, as issued by Steel & Tubes Division of Republic Steel Corporation, sole agents for domestic sales of rigid steel conduit, manufactured by Fretz-Moon Tube Company; after looking at those and refreshing your memory and recollection, what can you tell us as to the date on which you first had anything to do with the price card which carried the name of Steel & Tubes Division of Republic Steel Corporation?

1530 A. That question will call for a little explanation.

Actually, by the record, this is the first card on which the name appears. But we were a division of the Republic Steel Corporation before this card was put out, and, in fact, we were a division of Republic Steel Corporation at the time this card was put out.

Q. When you say "this card" you are pointing last to card 82?

A. Correct.

Q. Dated April 1, 1940?

A. Right. There is an error right here in not correcting the printer's instructions. He simply did it as he had done it before.

Q. But you continued to use it even with the error on it?

A. Yes; we were conservative.

Q. Were any of the customers to whom those cards were sent notified that that was an error?

A. No, sir, not as such. But they were notified that there was a corporate change in our set-up.

Q. They continued to get these cards without knowing there was any error in the printing of them?

A. Correct.

Q. And that continued until what date?

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A. Well, we corrected that in our card No. 83, which was effective November 18, 1940.

1531 Q. That was the first time they were notified by the showing on the price card of a change in this corporate change-over; is that correct?

A. This particular price card, yes. But we sent them a lot of other information that would tell them about it.

Q. I am talking about only published price cards; that was the first time?

A. On Fretz-Moon conduit.

Q. That is what I mean.

A. Yes.

Q. What difference did it make in your sales when this corporate change took place from Steel & Tubes, Incorporated, to the Steel & Tubes Division of Republic Steel Corporation?

Mr. Stewart: May I suggest that that question be clarified? Do you mean in amount, or what?

Mr. MacIntyre: Any change of any character in his sales that took place. That is a broad question.

The Witness: That is a broad question.

A. I would say none whatsoever.

By Mr. MacIntyre:

Q. The methods, practices, dealing with sales, were continued just as they had been?

A. Yes, sir. There is very little difference, Mr. MacIntyre, between being a subsidiary and a division. In fact, the change was made so gradually that there weren't

1532 many of our own people that realized it. Outside of having been officially notified, there was no other apparent change in our operations.

Q. Is it your testimony, then, that there was no effect brought about on operations by that change?

A. Yes, sir, that is correct.

Q. If it were not for the fact of the corporate records, minutes of meetings of the corporation, charters, and the like, that recorded the change, there would be no way of actually knowing that a change took place of that character; is that correct?

A. Well, no, that is not correct, exactly. There was a change in our stationery, and there was a change in titles, all through the old form of operation; that is, the Steel & Tubes, Incorporated, had a president, vice presi-

dent, and so forth, but Steel & Tubes Division starts out with a general manager. In other words, he is no longer an officer, he becomes a managing operator.

Q. But he is the same man?

A. It so happens he is, yes, sir.

Q. What is his name?

A. Well, I have got to explain that again. We have two gentlemen at the head of the Division; Mr. Henry Wick is in charge of operations; Mr. L. W. Hartson is in charge of sales.

1533 Q. Those gentlemen were not affected except by change in their titles when this corporate change took place; is that correct?

A. Well, that is correct, except we lost our president and never got anybody back in the same position again.

Q. But as to the management, there was no change?

A. That is correct.

Q. Now, did we understand you to say that you were not working with Steel and Tubes, Incorporated, in the east here prior to October, 1937?

A. No, sir, I didn't say that. I started to work for Steel & Tubes in 1929 in Cleveland, Ohio.

Q. Were you working for Steel & Tubes in the Cleveland and Pittsburgh Districts, or either of them, during the year 1936?

A. No, sir.

Q. Where were you then?

A. 1936, I was in San Francisco.

Mr. MacIntyre: That is all.

Mr. Stewart: That is all.

Trial Examiner Norwood: Cross-examine.

Mr. Stewart: None.

Trial Examiner Norwood: Call your next witness.

1534 Mr. MacIntyre: We will call Mr. Hula as the next witness at the instance of the Commission.

We want it understood if Mr. Hula is called as of Chicago that I have no authority to modify the terms of his subpoena except with the consent of Mr. King to the effect that any modification that is effected through his being called as a witness here will involve no mileage charges against the Government.

Mr. King: You have my consent.

If your Honor please, I would like to state that Mr. Hula is here on his way to Washington at the request of

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the Office of Production Management; that that request was received by him prior to the time the subpoena was received by him, because the subpoena was mis-directed and sent to 20 North Wacker Drive, Chicago, whereas the Clayton Mark plant is in Evanston, Illinois. So this engagement was made prior to the receipt of the subpoena.

ROBERT HULA, a witness called by and on behalf of the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

1535 Q. Mr. Hula, what is your business and occupation?

A. I am vice president of Clayton Mark & Company at Evanston, Illinois.

Q. That is one of the Respondents here?

A. Principally the general supervision of sales and order departments.

Q. I don't believe you got the question, but it doesn't matter. You understood my question to be what those duties were of that position?

A. Yes.

Q. And that is what you were answering?

A. That's right.

Q. What, if anything, do you have to do with the issuance of price quotations?

A. My responsibility in the sales department gives me supervision over the general price policies of the company.

Q. How long have you held that position with the company?

A. Since October 12, 1938.

Q. And what did you do prior to that?

A. Prior to that time I was manager of sales for the Clayton Mark Company for a period beginning 1930.

Q. And you were with the company prior to that?

A. Yes; I began in 1924.

Q. In the traffic department?

A. In the traffic department.

1536 Q. In what capacity?

A. I was traffic manager and assistant to the sales manager from 1924 up to 1930.

Q. Sales manager from 1930 to 1938, as you have told us?

A. That's right.

Q. And the sales of Clayton Mark & Company include the sales of rigid steel conduit?

A. Among other things; yes.

Q. Over what territory does it solicit business and sell rigid steel conduit?

A. Throughout the United States.

Q. And where does it secure the conduit that it thus sells?

A. Speaking of what period, Mr. MacIntyre?

Q. Well, as of January, 1941.

A. As of January, 1941, and up to the present time, we have been obtaining our rigid conduit principally from the Youngstown Sheet & Tube Company, from the Enameled Metals Company, and from the Fretz-Moon Tube Company.

Q. What percentage of it do you secure from the Youngstown Sheet & Tube Company?

A. The major portion of it.

Q. Is the balance approximately equally divided between Enameled Metals and Fretz-Moon Tube?

A. No; I would say the latter are a very small
1537 percentage of the total.

Q. I don't know whether I quite understand your last answer.

What I asked you is: is the small amount that you do not purchase from the Youngstown Sheet & Tube Company about equally divided between Enameled Metals and Fretz-Moon Tube Company?

A. Yes, approximately.

Mr. Stewart: I didn't catch your question.

Trial Examiner Norwood: Read it.

(Last question read.)

Mr. Stewart: I object to the form of the question because the witness didn't say that a small amount was purchased from the two companies. He said a majority was purchased from Youngstown Sheet & Tube Company and I submit there is no evidence yet that a small amount was purchased from the other two companies.

Trial Examiner Norwood: Let him tell us about that.

Mr. MacIntyre: I think the record will show what he has already testified to.

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The Witness: I think I have answered the questions.

Mr. Stewart: You meant the last two companies. You said the latter. I thought you meant Fretz-Moon Company.

1538 By Mr. MacIntyre:

Q. The conduit secured from these three companies are manufactured by them where?

A. By Youngstown Sheet & Tube Company, it is manufactured at Struthers, Ohio.

By Fretz-Moon, at Butler, Pennsylvania.

By Enameled Metals Company, I think it is Etna. I am not sure.

Q. E-t-n-a, Pennsylvania?

A. E-t-n-a.

Q. And when you make sales of conduit which you purchase from them, which is produced at those three locations, how are the shipments made?

A. You mean how are they made, or to whom are they made?

Q. You are first asked to whom made.

A. Some of the shipments are made to us at Evanston, Illinois, and others are made direct to our customers.

Q. How are the shipments made from those three points?

A. Some of them are made all rail; some of them are made by rail-water-rail to the Pacific Coast.

Some of them are actually made by truck.

Q. Leaving out the shipments made to the Pacific Coast, are any of the others made except by rail; that is, all rail?

A. Yes.

1539 Q. How?

A. By truck.

Q. To what points?

A. That varies according to the condition at the particular time.

Q. Would you say that those shipments made by truck are made to customers within a radius of a few miles from the point of production?

A. No, I wouldn't say that that was restricted to a small haul; short haul.

Q. What would be the maximum haul, as a general rule, that would be involved?

A. It might be as much as 250 to 300 miles.

Q. Now, on these shipments that are made by truck

from those points of production you have mentioned to distances up to 250 and 300 miles, what is your practice in quoting prices to customers who buy conduit thus shipped?

A. We actually endeavor to charge the truck rate into price.

Q. How do you determine, in making the quotation, what the truck rate is going to be?

A. We check with our traffic department to find out what the rates are, before we specify the routing on the orders.

Q. Have you ever published any price cards which specify that the customer shall determine his delivered
1540 cost by including any FOB mill prices plus any trucking rates that are applicable from the factories of production to his destination?

A. I don't think I can answer that question because it is too involved. If you will break it up into two or three segments, I might be able to answer your question.

Q. All right. I will break it down.

Trial Examiner Norwood: Did you ever base the price on the truck rate to any particular point?

The Witness: Yes.

By Mr. MacIntyre:

Q. You are well acquainted with the price cards put out by your company and those put out by your competitors, are you not?

A. In a general way, I have a pretty fair knowledge of price cards.

Q. And you have been so acquainted with them ever since you have been with your company; that is, since you have been manager of sales, since 1930?

A. I would say more particularly since 1938, as prior to that time I did not have any jurisdiction over the conduit sale policy of our company.

Q. But as manager of sales of conduit during 1930 to 1938, you did know about the price cards your company put out?

1541 A. Yes.

Q. And those of your competitors?

A. In a general way.

Q. And you know that throughout the period since 1930, that your company and its competitors published price cards which provided for the method of figuring delivered price quotations in that manner; that is, in that manner

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that is shown by your price cards—that is, the price cards of your company in evidence here as Commission's Exhibit 56?

A. I am not familiar with Commission's Exhibit 56, but I assume you are referring to the general price card as published by us.

Q. I show you Commission's Exhibit 56, so you will be certain you know what we are talking about.

You are thoroughly acquainted with all those cards, numbered 69 to 84, issued by your company, and which is Exhibit 62?

A. I am looking at Exhibit 56-A, which is a photostatic copy of a price card issued by Clayton Mark & Company under date of April 2, 1934.

Q. Well, as to that card and the others subsequently published by it, as shown by Commission's Exhibit 56, there, up to and including those issued January, 1940, you knew about those cards and what they contained, didn't you?

A. Yes, sir, I do.

1542 Q. And in that connection you knew about the statement contained in them as to the method by which customers of your company were to determine delivered price quotations?

A. Yes.

Q. And you have known throughout the period during which those cards were being issued by your company, that your competitors, or competitors of your company, were issuing cards carrying a statement providing for the determination of delivered price quotations in exactly the same manner; is that correct?

A. I am not willing to admit that they are identical or in the same manner, but there was a definition for the determination of delivered prices provided in connection with the use of freight rates.

Q. That is, by adding freight to certain basing prices at Pittsburgh, Pennsylvania, and Chicago, Illinois, or Evanston, Illinois, as the case may have been?

A. Yes, sir.

Q. You knew that as having been the method prescribed in the cards issued by your competitors?

A. It was a method provided by the cards. I wouldn't say it was prescribed.

Q. Provided for in the cards. Put it that way.

Trial Examiner Norwood: Do you know whether others observed that provision or not?

1543 The Witness: Well, from common knowledge, I think it was more or less a standard practice of computing prices based on a Pittsburgh base. Common knowledge.

By Mr. MacIntyre:

Q. And you also know, do you, that you, in computing delivered prices in the manner outlined in these cards, such as shown by Commission's Exhibit 56, your company received larger amounts as mill nets on shipments that it made to customers of it located nearer the points of the origin of the shipments than it did from customers located at greater distances? Isn't that correct?

A. There you have to go back into a definite period of time. This exhibit starts in 1934. I am not clear, to make any answer.

Q. Let us take the period as of January 1, 1941. What is your answer as to that period of time; to the question?

A. Generally speaking, we receive a greater mill net in the local Chicago area than we do in New York markets.

Q. And that would be true also of any customer of yours in Youngstown, Ohio, and Cleveland, to whom you shipped conduit from Struthers, Ohio?

A. No, it would not.

Q. Well, it would apply more so, then, as to customers of yours located in Columbus, Ohio, wouldn't it?

A. Not so far as Clayton Mark & Company are concerned.

1544 Q. Why wouldn't it?

A. Because Clayton Mark & Company don't do the actual equalizing of the freight rates.

Q. Who does?

A. Youngstown Sheet & Tube or the supplier.

Q. On what basis do you purchase this conduit which is shipped to your customers for you by the Youngstown Sheet & Tube Company from Struthers, Ohio?

A. The arrangement we have provides for the invoicing of conduit sold by us on delivered freight basis. We get an overriding commission; so that Clayton Mark & Company actually don't profit from any freight advantages; or suffer any disadvantages.

Q. So, then, as to any differences in mill nets, which

you received from any of your customers, as distinguished from any other customer of yours, it applies only on shipments made by you out of Chicago or Evanston; is that correct?

A. That's right. But in a great many instances—I might go on to explain that we very seldom make any full carload shipments from our Evanston mill on rigid conduit. We use the rigid conduit as a fill-out on shipments of other materials going to the jobber.

Q. Whether it is made by carload or less than carload, it is still made on a basis which would permit you to
1545 recover a larger amount of money from your customers at greater distances than Chicago, than those in Chicago, in many instances; is that correct?

A. No, I wouldn't say we would gain any advantage under that condition; for the reason that any material we ship out of Evanston is purchased on a Chicago base, which is $4 a ton higher than the Pittsburgh base.

We—when we sell the material and ship it from our warehouse at Evanston to Indianapolis, Indiana, we are obliged to compete against a so-called Pittsburgh base, which is $4 a ton lower, and, therefore, we have a disadvantage of $4 a ton to start with.

Q. But as to that customer in Indianapolis, Indiana, you receive a smaller amount from him on shipments made by you from Chicago or Evanston than you do from your customers located in Chicago who purchase from you on shipments out of your Chicago house; is that correct?

A. As between customers, yes, but as to the volume no.

Q. Well, on like quality and like quantity, that would apply as between customers at such locations; is that correct?

A. Yes, I will concede that.

Q. And why is that?

A. Why is it that we obtain a greater mill net—

Q. That is correct.

1546 A. That is the result of market competition.

Trial Examiner Norwood: It is caused by the freight absorption, isn't it?

The Witness: It is caused by two factors, the freight absorption, isn't it?

The Witness: It is caused by two factors, the freight absorption and the Pittsburgh base itself.

By Mr. MacIntyre:

Q. That would not be the case if you lowered your Chicago base on what you quote to a level where it, plus freight, would reach out to the greatest limit to which you would ship from Chicago; is that correct?

A. Well, let me assume that the Chicago price is $4 higher than the Pittsburgh base. You mean to eliminate that $4 spread, would we reach out further?

Mr. MacIntyre: I believe we had better have the question read.

The Witness: Beyond a distance of about a hundred miles of the local surrounding Chicago area you would come into the influence of the Pittsburgh freight rate.

Trial Examiner Norwood: Knowing the rate, that would reach out just that much further?

The Witness: That's right.

By Mr. MacIntyre:

Q. If you lowered your Chicago base FOB mill price at Chicago, or sold on an FOB mill price at Chicago which was so low that when you added to it, the freight
1547 there from to any point to which you make shipments from Chicago, then you would not run into any influence from the Pittsburgh basing point price, would you?

A. Well, you have got a hypothetical assumption there. "So low." I don't know how low you mean.

Q. Well, I have placed the limit on that by saying so low that the FOB mill price in Chicago plus freight to any destination to which you make shipments from Chicago would not equal or not be as high as the Pittsburgh basing point price plus the freight from Pittsburgh, then no mill net you would receive would be influenced by the Pittsburgh basing point price, would it?

A. I can't answer your question because I don't understand it.

Trial Examiner Norwood: Suppose your base price was less than Pittsburgh.

The Witness: Just Pittsburgh?

Trial Examiner Norwood: Yes; less than any other base price.

The Witness: Then, to the extent that Chicago had a lower freight rate than Pittsburgh, we would have the benefit of that particular market.

Trial Examiner Norwood: And in that case you would

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receive—or would you receive more mill net from the nearby shipments than you would from the other?

1548 The Witness: Yes, if we still had to meet Pittsburgh competition beyond the influence of the freight rate.

By Mr. MacIntyre:

Q. But if you didn't meet Pittsburgh competition, and made no solicitation or any sales beyond this territory in which you had the advantage, you wouldn't be taking any different mill nets from one of your customers than another, would you?

A. I can't imagine that anyone would expect to circumscribe the markets of this country on any theoretical basis of that kind.

Trial Examiner Norwood: I don't think he asked you that question.

Read the question.

The Witness: It is a hypothetical question, hypothetical situation.

Trial Examiner Norwood: Read the question.

(Last question read.)

A. The answer is clearly no, if you assume that question.

Q. Well, you know, as a fact, that if you lowered your prices to a level below those of your competitors in Chicago, you could, on a price basis, secure more business than you can handle in Chicago itself—

1549 A. No.

Q. —and surrounding vicinity there?

A. No.

Q. You do know that some of your competitors ship conduit into Chicago, don't you?

A. I do.

Q. A number of them?

A. Yes.

Q. Do you attempt, in your price cards, where you publish your prices to your trade in Chicago, quote any lower price than those competitors of yours who ship into Chicago?

A. I would like to have that read back. I have lost the thread there.

Trial Examiner Norwood: Read it.

(Last question read.)

A. I would like to explain that we don't quote prices by price card. We quote prices by letter.

When a customer asks for a quotation or desires to make an arrangement, we quote him by letter—

Trial Examiner Norwood: That is not the question he asked.

The Witness: There is a difference between what—

Mr. Stewart: I submit, Mr. Examiner—

Trial Examiner Norwood: His answer goes to his manner of his quoting.

1550 Mr. King: May we have the question read?

Trial Examiner Norwood: If he attempts to quote any price lower than the prices of those who ship into Chicago.

Mr. Stewart: No, sir.

Trial Examiner Norwood: That is the question.

Mr. King: May we have the question read?

Trial Examiner Norwood: Read it.

(Last question read.)

Mr. King: I think the answer is entirely proper.

Trial Examiner Norwood: I beg your pardon?

Mr. Stewart: And I think the answer is entirely proper.

Trial Examiner Norwood: I hadn't noticed the reference to the card.

Mr. Stewart: The answer is entirely proper.

Mr. MacIntyre: The answer is what, Mr. Stewart?

Mr. Stewart: I say, it is entirely proper to the question as asked.

Mr. MacIntyre: What is the answer? I haven't heard it.

Mr. Stewart: He says they don't quote by price cards.

Mr. King: Let him finish his answer.

Mr. MacIntyre: That answers the question that

1551 I have asked.

Trial Examiner Norwood: One at a time, please.

Mr. MacIntyre: If your Honor please, I submit that that answers the question I asked, and I request I be permitted to examine the witness on further questions.

Trial Examiner Norwood: Yes. Proceed.

Mr. King: May we have the answer read?

Trial Examiner Norwood: No.

Mr. Stewart: The point is, the witness had not finished his answer when you interrupted him,—if you will pardon me for suggesting that.

Mr. King: I think if you will have the answer read, it is apparent.

Mr. MacIntyre: He answered the question he doesn't quote the price cards, and I am going to follow that up with another question if counsel will permit me to do so.

Trial Examiner Norwood: Read the answer.

(Last answer read.)

A. (Continuing) —or by contract.

By Mr. MacIntyre:

Q. Now, Mr. Hula, is it your testimony here, and do you want us to understand it to be your testimony, that the price cards that you issue, which are in evidence here as Commission's Exhibit 56, do not carry any quotations of your company of prices to your customers?

1552 A. They are not absolute quotations.

Q. What are they?

A. They are a standard indicating approximate price levels which are desired by the trade itself and not required by us as a seller.

Q. You mean to say that you never collect those amounts from your customers which are included on those cards?

A. I didn't say that we do not collect the amounts that are on the cards.

Q. Why do you collect the amounts on the cards if the amounts carried on the cards are not price quotations?

A. For the reason that we must determine the competition at a particular market.

Q. Let us take a particular situation, Mr. Hula.

Suppose one of these customers to whom you send your published price card writes you and states that he wants you to ship him one carload of conduit; ½ inch galvanized; and gives you the destination.

He has had your price card. Nothing else is said about the price. What price do you charge him?

A. If the prevailing card as published is the then existing price, we would advise him that the price would be computed on card so-and-so, plus the freight from the lowest basing point.

Q. That would be in accordance with the card?

1553 A. That would be in accordance with the card, but it is at variance with the general practice which has existed in the industry for the years that I have been in it.

Q. Now, is it your testimony at this time, Mr. Hula, that it is not the practice of the industry to quote prices in accordance with these price cards that are in evidence here?

A. I will say, generally, yes.

Q. Or to make sales in accordance with the price cards in evidence here?

A. I wouldn't say that there were no sales made on the card, Mr. MacIntyre. I say the preponderance of the sales are not made specifically and solely on the published price cards or the freight rates, or anything else.

Trial Examiner Norwood: Are the majority of the sales made at the price indicated by the card?

The Witness: Indicates the general level in existence at the time.

Trial Examiner Norwood: Are the majority of the sales made on the general level?

The Witness: I couldn't answer that question. I don't know what my competitors are doing.

Trial Examiner Norwood: Are the majority of your sales made on the general level?

The Witness: I would say the greatest portion of our sales are made on the card; that is, the card sales.

1554 By Mr. MacIntyre:

Q. What do you say about the period of 1937?

A. I am not thoroughly familiar with the period of 1937, Mr. MacIntyre.

Q. Mr. Hula, I am showing you Commission's Exhibit 318. Will you please explain to us how your company and your competitors, in submitting bids to the Federal Government under seal, which were opened at that time, arrived at the price $8,188.90 on the conduit on which you were quoting, if you did not use the card and method which you described to us here this morning.

A. I am unable to explain what prices were used in computing the $8,188.90, which you refer to, but this was during the period of NRA, and the Code required the observance of published card prices, if my recollection is correct.

Q. Is it your testimony now that at the time the bids were opened that you and your competitors in the industry were still using the NRA Code and operating in accordance with the Code as to price matters?

A. As of the date of this opening?
Q. Yes.
A. Well, that is my recollection.
Q. And you would ascribe the uniformity or matching of prices as is shown by Commission's Exhibit 318
1555 to the operation of price policies, such as were carried on under the NRA Code?
A. That would be my answer.
Q. Mr. Hula, I now show you Commission's Exhibit 321, which includes a showing of bids that you and your competitors submitted to an agency of the Federal Government under seal, in which you and they bid $598.50. Would you give the same explanation as to the securing of matching of bids there as you did to the question I asked you about Commission's Exhibit 318?
Mr. Stewart: Just a moment. I submit that is not quite fair. Do you mean by that that you are asking the witness whether that bid was made on the basis of NRA, without telling him it is December, 1935; is that what you are trying to do?
Mr. MacIntyre: All of these have the dates on them.
Mr. Stewart: All right. Call his attention to it. I think that is not the way to ask that question.
Trial Examiner Norwood: Answer the question.
A. I don't recall what reason there was for the similarity of figures.

By Mr. MacIntyre:

Q. You have no explanation?
A. Since the NRA was nullified by the Supreme
1556 Court, I couldn't give you an answer to that. I didn't figure the bids, so I don't know.
Q. You can't explain to us how you and your competitors arrived at such a matching of prices as is shown by these exhibits on those dates; is that correct?
A. I can't tell you why it is.
Q. Nor how they did it?
A. Yes, I think I can explain how they did it. It would be my—
Q. Tell us how they did it.
A. It would be my own deduction. It was a carry-over of the NRA Code.
Q. You think that it was a matter of being influenced by the NRA Code?

A. I think so.

Q. You have no other explanation for it; is that correct?

A. No. I think I can say this candidly, that we personally had been influenced by the Code after the Code was abolished by the Supreme Court decision.

Q. When did you start figuring the prices that your company submitted under seal to the Federal Government?

Mr. King: He hasn't stated if he has figured. Why don't you ask him if he did?

Mr. MacIntyre: It is my understanding that he so testified. If he hasn't, he can tell us.

1557 A. You want to know when we began?

By Mr. MacIntyre:

Q. That you began having anything to do with the figuring of prices that your company submitted to the Federal Government under seal. Was it 1938 in January, when you became a general sales manager, or president, or whatever position you are now holding?

A. I want to clear the question as to whether you are referring to me or to the company.

Q. To you.

A. I would say subsequent to October 12, 1938.

Q. Mr. Hula, I show you Commission's Exhibit 327, which shows that you and a number of your competitors submitted under seal to the Federal Government a bid of $5,011.50; will you explain to us how you and your competitors could have arrived at such a figure?

Mr. Stewart: I object to the form of the question, for it is perfectly obvious that the witness could not know how the competitors arrived at the figure. It would be pure speculation on his part, and I object to these questions on that basis. You can ask him how he arrived at it, but how his competitors arrived at it, would be another matter.

Trial Examiner Norwood: I think there would be a possibility for him to have some knowledge on the

1558 subject of the methods that were employed by his competitors. If he has that knowledge, he may give it to us; if he hasn't, he may say he hasn't.

Mr. Stewart: Very well.

A. Well, of all the bids submitted, about a dozen are considerably under the figure we quoted, and I can only assume that the figure of $5,011.50 which we submitted was predicated on our then current card. I also wish to call

attention to the fact that Youngstown Sheet & Tube Company quoted $4,554.50 as against our quotation, which presumably was on our published card.

By Mr. MacIntyre:

Q. The only explanation that you can give us now as to the reason that you and your competitors quoted the $5,011.50 price is your use and their use of price cards in arriving at the delivered price bid?

Mr. Stewart: I am going to object again, because the witness has not made that explanation, and I submit it would be pure speculation on his part.

Trial Examiner Norwood: Read the question, and read it slowly.

(Last question read.)

By Mr. MacIntyre:

Q. Is that correct?

A. Not entirely.

1559 Trial Examiner Norwood: Objection overruled.

By Mr. MacIntyre:

Q. What other explanation can you give us at this time, then, Mr. Hula?

Mr. King: Are you asking him—excuse me just a minute. I would like to get clear are you asking him for an explanation of his competitors' or his own company's?

Mr. Stewart: That is just it.

Mr. MacIntyre: I ask that the question be read if Mr. King and the witness do not understand it.

Trial Examiner Norwood: Read the question.

(Last question read.)

Mr. King: I might say I don't know whether he means of Clayton Mark or his competitors.

Trial Examiner Norwood: He understands that, because it follows another question that was very elucidating.

A. I am not certain, but my recollection is that this Panama Canal inquiry had some unusual specifications attached to it, which wasn't attractive to us at the time, and we quoted the card price.

By Mr. MacIntyre:

Q. Well, is there any other explanation that you can give as to how you and your competitors arrived at that price that you did quote?

Mr. Poskanzer: I object to that question as as-
1560 suming a fact not in the record. The witness has testified that some quoted the same price and some quoted another price. Now, the question assumes that all of the competitors quoted the same price; and it is not true.

Mr. MacIntyre: I said "that price," and, of course, there is only one price which this man quoted.

Trial Examiner Norwood: Objection overruled. I think it is clear. Do you understand the question?

The Witness: No, I don't.

Trial Examiner Norwood: Read it.

(Last question read.)

Mr. Poskanzer: I think, if your Honor please—

Trial Examiner Norwood: The price you quoted.

Mr. Poskanzer: I think his question should be limited to some of his competitors.

Trial Examiner Norwood: I think it is perfectly clear. Answer the question.

Mr. Poskanzer: All right.

A. I can't think of any other reason.

Mr. Stewart: I move that the answer be stricken out for the reason that it is pure speculation on the part of the witness. If he knows, that is different. But I submit that when he undertakes to speculate as to how his com-
petitors figured that price, that that is highly im-
1561 proper testimony, and of no value to us at all.

Trial Examiner Norwood: I think that the witness' answer is a factual statement as to his state of mind or as to the extent of his knowledge on this pertinent matter.

Mr. Stewart: I don't want to protract the argument, but what Mr. MacIntyre is asking him is: how, looking at his bid, did his competitors figure their price. Now, how can he know that?

Trial Examiner Norwood: That is a matter of investigation now.

Mr. King: I think the record is entirely clear. I am perfectly satisfied with it.

By Mr. MacIntyre:

Q. Mr. Hula, I show you Commission's Exhibit No. 359, which shows that you and a number of your competitors quoted a price, or submitted a price, as a bid under seal, to the Federal Government, which were opened October

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29, 1940, the price being $99,652.68. Can you give us any explanation as to how you and your competitors who quoted that price arrived at it, other than the explanation you have given to these other prices which you and they quoted the same or matched prices?

Mr. Stewart: Just so I don't have to keep repeating the objection, but to every question in this form in which the inquiry is made of the witness asking for an
1562 explanation from him as to how his competitors calculated their bids, I object to it as incompetent, irrelevant, and immaterial, and manifestly hearsay.

Mr. MacIntyre: If your Honor please, I submit that aside from the question of attempting to get at the facts which are relevant and material to the issues raised by the Complaint, that the question, and the others of a similar character, which I am putting to this witness, are justified on the basis of fairness to the Respondent he represents, as well as the other Respondents, because they are charged with fixing uniform delivered price quotations by agreement, if you please, under Count 1. If this witness can explain any method that was used by him and his competitors in arriving at the prices shown by this exhibit now in question, other than by agreement, I think not only is the Commission and the Courts entitled to his answer, but he is entitled to make it for the fairness of those he represents.

Mr. Stewart: I have learned by bitter experience to beware of the Greeks, so don't worry about us; we will take care of our case. What you are obviously trying to do is to establish by this witness not that there was anything other than agreement by this method of bidding, but what you are trying to establish by indirection is that there was agreement on these bids. What I am objecting to is
1563 he doesn't know and can't know.

Trial Examiner Norwood: I think that the questions are properly directed to the witness' knowledge.

Mr. Stewart: That is the point.

Trial Examiner Norwood: First, of what he and his company does, and what his competitors do, if he knows.

Mr. Stewart: If you will make that plain to the witness, I will be content.

Trial Examiner Norwood: I think the witness is intelligent enough to answer of his own knowledge, and he has stated he has knowledge of some of the particular points, and I think the questions are, therefore, proper.

Mr. Stewart: I am quite content, sir, if you will make it plain to the witness that he is to stick to his own knowledge, and not speculate.

Trial Examiner Norwood: Answer the question.

A. You asked if I could explain how some of these bids were identical with my competitors'?

By Mr. MacIntyre:

Q. I am asking you now, Mr. Hula, whether or not you can give us any explanation as to how you and your competitors matched your bids as is shown by Commission's Exhibit 359, other than through the use of the method of determining delivered price quotations as provided for in your price cards.

1564 Mr. King: If your Honor please, I don't like to object to any questions put to this witness, because I want him to give his complete knowledge about this situation. But I must object here because I think the question misinterprets the record. This witness has given an explanation for a prior bid which he looked at, and the explanation was that it was probably something peculiar about the specifications of the Federal Government on the prior bid that was shown him that made his price high. The bid was not attractive to him, Mr. MacIntyre's pending question, as I understand it, is: does this witness know of any other reason than that concerning the exhibit he is now looking at.

Trial Examiner Norwood: Objection is overruled. Answer the question.

A. I don't know of any other way by which a uniform figure might have been computed, except by the use of the published price cards.

By Mr. MacIntyre:

Q. In other words, you have no other explanation for the matched bids that appear in that Exhibit 359?

A. Yes, I can give you one identical case here. For instance, the figure on Bid 231 of J. J. Koepsell Company, being $99,652.68, is identical to ours, because that gentleman is our jobber and distributor. He got his quotation from us. Also, we quoted Loman Electric Company,

1565 bidder No. 251; those figures are identical. So in a sense they are not competitors of ours, but jobbers and distributors of ours.

Q. But those prices as submitted by them, which are matched by you and by a number of your competitors, in that Exhibit 359, you have no other explanation as to the manner in which they could have matched them—and did match them—other than the use of price cards in the building up of the price; is that correct?

A. I answered that in the affirmative.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Cross-examine.

Cross-Examination by Mr. King.

Q. Mr. Hula, Mr. MacIntyre, on direct examination, asked you how long you have been with the Clayton Mark Company, and I believe you stated since 1924; is that correct?

A. Since June, 1924.

Q. When did the Clayton Mark Company begin business, if you know?

A. Approximately January 1, 1925.

Q. Was that company a newly organized company, or was it a continuation of some other company?

A. It was an entirely new organization.

Q. Mr. MacIntyre also asked you some questions
1566 concerning whether or not Clayton Mark & Company quoted customers on an FOB price. Does the company quote on an FOB price in any instances?

A. We have in numerous instances quoted FOB our mill.

Q. Do your invoices show that?

A. Yes. My recollection is that a full set of invoices was submitted to Mr. MacIntyre for the period of 1937, which indicates that information.

Trial Examiner Norwood: Would that be your base price? Would that be the equal of your base price?

The Witness: That we have made numerous quotations on an FOB mill basis, FOB Chicago price. That evidence has been submitted.

(A discussion was had off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. King:

Q. You stated, Mr. Hula, that your published cards show a Chicago and a Pittsburgh base price; will you tell us who fixes for your company—

Mr. King: Strike that.

Q. Will you tell us who fixes the FOB—strike "FOB" —the Chicago base price?

A. Well, I don't want to be egotistical, but I think we control the determination of the Chicago base price.

Q. What goes into the determination of that base price?

1567 A. Various factors of cost, particularly the cost on raw materials.

Q. Is that cost higher or lower than a similar cost in or to Pittsburgh?

1569 A. The cost in Chicago is higher.

1570 By Mr. King:

Q. Do you have any knowledge, Mr. Hula, of costs in connection with the manufacture of conduit in and around Pittsburgh?

A. I have some general knowledge.

Q. What goes to make up that cost, sir, if you know?

A. The cost of raw pipe.

Q. How can you ascertain that cost?

A. It is very easily ascertainable, if you are familiar with the conduit industry. You can obtain the basic cost of raw pipe by referring to the discounts printed in

1571 the "Iron Age Magazine" or "Steel," general publications will give you the basic discounts on steel pipes, to which you add the cost of converting from raw pipe to the finished conduit.

Q. Now, what goes into the making up of the Pittsburgh base price published in any of your cards, price cards? How was that Pittsburgh base price determined by you, sir?

A. We analyze the competitive published prices on conduit, and if we feel that they represent the gross margin of profit between our cost and selling price, we invariably adopt them as our Pittsburgh base on our published card.

Q. Does your company solicit business from the Federal Government particularly?

A. We are listed on the Government division bids, yes. They come to us periodically.

1574 By Mr. King:

Q. Mr. Hula, have you yourself, or, to your knowledge, has anybody connected with Clayton Mark & Com-

pany, ever agreed with anybody else, including any of the Respondents in this case, to fix and maintain their prices?

Mr. MacIntyre: Just a moment. I object to that because it calls for a conclusion and not evidentiary fact.

Trial Examiner Norwood: Objection overruled.

Answer the question.

Mr. King: Do you want the question re-read?

The Witness: Am I permitted to answer?

Trial Examiner Norwood: Yes.

A. To my knowledge, I have never known of anyone in our organization, including myself, of having discussed any agreement or understanding about maintenance of prices.

By Mr. King:

Q. Is that true as applied to any of the Respondents in this case? I mean, does that include—

A. It includes all of them.

Trial Examiner Norwood: What do you mean? None of these Respondents have ever entered into any agreement as to price? Or you mean so far as you know?

The Witness: So far as I know, I said, to the best of my knowledge, no one in our organization, nor myself, 1575 have ever had any agreements, or discussed any agreements.

Trial Examiner Norwood: Proceed.

By Mr. King:

Q. Does your answer, Mr. Hula, include agreements expressed, implied, oral, or written?

A. I lost one word there.

Trial Examiner Norwood: Read it.

(Last question read.)

A. Yes.

By Mr. King:

Q. Mr. Hula, in connection with any of the tabulations of bids shown you by Mr. MacIntyre, do you have any personal knowledge how your competitors shown in those bids arrived at their prices?

A. I can't vouch for the accuracy of the compilation of the total figures. I wouldn't know what the details were that went into the making of those total figures. If you asked me to break it down and say what does $5500 repre-

sent, I couldn't tell you how much is freight or what was base price or otherwise.

Mr. King: I think that is all.

Trial Examiner Norwood: Any further questions?

Q. (By Mr. Robison.) Mr. Hula, I think you said Clayton Mark & Company does not now manufacture rigid steel conduit; is that what I understood?

1576 A. That is correct.

Q. And that Clayton Mark Company started business in the early part of 1925?

A. Clayton Mark & Company started in 1925.

Q. Has that company at any time since the early part of 1925 been a manufacturer of rigid steel conduit?

A. Yes, sir, they were from 1925 until October 12, 1938.

Q. And where was their plant at which they manufactured that kind of conduit?

A. The plant was located at 74th and Damen Avenue, Chicago.

Q. That is in the City of Chicago?

A. Chicago proper.

Q. Is that plant now in existence as a conduit plant?

A. The plant has been dismantled early in 1939; has subsequently been sold.

Q. You mean—

A. The property and all.

Q. The real property has been sold; is that what you meant?

A. Yes, sir.

Q. At that time did Clayton Mark & Company acquire a plant at a different location?

A. We purchased a plant at Evanston, Illinois, as of October 12, 1938.

1577 Q. And what was done with the equipment of the Chicago plant which had been used for the manufacture of rigid steel conduit?

A. That equipment was moved from the Chicago location to the Evanston location, and has been in use ever since its installation early in 1939.

Q. You say it has been in use?

A. Yes, sir.

Q. But has it been in use since that time for the manufacture of rigid steel conduit?

A. No, sir, it has not. And I assume it is best to explain the reason. We have also utilized the same equip-

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ment for the manufacture of light wall conduit, which is made from a thin gauge material, and that has occupied the entire productive capacity, beginning in 1939.

Q. If your company should elect to produce rigid steel conduit, would it be equipped to do so at that plant?

A. It is equipped at the present time, with the exception of providing a couple of chains on a crane runway to lower the pipe into pickling tanks.

Mr. Robison: I am through.

1578 Trial Examiner Norwood: Any further cross-examination?

Mr. King: I think I have one more question.

By Mr. King:

Q. Mr. Hula, in the publishing of your price cards at the Chicago-Pittsburgh base, do you do so as the result of any agreement, understanding, or inquiry with any other Respondent in this case?

A. No, sir, we do not.

Q. Mr. Hula, do I understand the fact to be that Clayton Mark actually ships some of its conduit from its plant in Chicago, or at Evanston?

A. At Evanston, yes.

Q. Do you know whether or not Evanston is in the Chicago Switching District?

A. It is, definitely.

Q. Would you mind explaining what that means?

A. The inclusion of Evanston in the Chicago Switching District means a common blanket switching rate available for one, two, or three-line deliveries in the Chicago District.

Q. Regardless of distance?

A. At a common rate.

Mr. King: That is all.

Trial Examiner Norwood: We will recess until 2 o'clock at this time.

(Thereupon, at 1 P. M., an adjournment was taken to

1579 Afternoon Session.

2:00 p. m.

Trial Examiner Norwood: The witness will take the stand.

ROBERT HULA resumed the stand and testified further as follows:

Further Cross-Examination.

Mr. King: I have just two more short questions, if I might ask them, your Honor.

By Mr. King:

Q. Mr. Hula, do you know who established the Chicago base?

A. Clayton Mark & Company established the Chicago base in 1924 when it entered the rigid conduit field.

Q. Now, Mr. Hula, the Trial Examiner asked you whether or not Clayton Mark would get greater penetration if it reduced its base price at Chicago to a level or lower than the Pittsburgh base. I ask you what would happen to Clayton Mark & Company if that took place?

A. Theoretically it might extend the field of the market but actually it would reduce the net profit to a point where it would be unprofitable to stay in the business.

Mr. King: That's all. Thank you.

Trial Examiner Norwood: Redirect.

1580 *Redirect Examination by Mr. MacIntyre.*

Q. Is it your testimony, in response to that question, then, Mr. Hula, that there is no medium between what you are now doing and what you could thus do, that would be profitable to you?

A. There are other ways that prices could be quoted, without resorting to the present system, if you please.

Q. And which would be profitable to you; as you see it?

A. I think so.

Q. Just before lunch you told Mr. King that you had not ever entered into agreements with any of your competitors, expressed, oral or implied; do you recall?

A. That's right.

Mr. King: To fix and maintain prices, Mr. MacIntyre, was the question.

By Mr. MacIntyre:

Q. Now in order that we may thoroughly understand, Mr. Hula, just what you mean when you used the term "implied," will you give us an example of an implied agreement as you understand that term?

A. Yes, I understand it.

It would be in a case where two or more people get together and discuss the advisability of maintaining some process or method of determining prices, or publishing exact figures, or the like.

1581 Q. Or as to trade practices which would affect the level of prices. Would you include that?

A. Yes, or as to trade practices.

Q. Would you include as falling within that term a course of action of two or more competitors meeting, discussing prices and expressing opinions, during the course of such discussions, as to what they believed that the prices ought to be, and then the parties, after the meeting, each quoting prices shortly thereafter at the levels where they expressed their opinions the prices should be?

Mr. Stewart: I object to that question as being improper, irrelevant and immaterial and asking the witness for an opinion or a state of facts which he is not competent to give.

Trial Examiner Norwood: The understanding of the terms he has used; he has a right to test that.

The objection is overruled.

Read the question.

(Last question read.)

A. That is a matter of opinion. In my opinion I would say no.

By Mr. MacIntyre:

Q. That does not mean implied agreement to you?

A. That's right.

Q. And it would not mean oral agreement to you, 1582 is that correct?

A. That is correct.

Q. Mr. King and Mr. Robison were questioning you just before lunch concerning the location of your mill.

A. Yes, sir.

Q. And the movement of certain machinery from some other location in Chicago to your mill.

A. Yes sir.

Q. And you told them that you had operated machinery in the manufacture of conduit up until 1938; was that correct?

A. We were actually producing rigid conduit with the equipment at the Chicago location up to October, 1938.

Q. Have you at any location in Evanston, or Chicago, since October, 1938, manufactured rigid steel conduit?

A. No, sir, we have not.

Q. To your knowledge has any other manufacturer produced rigid steel conduit—

A. Yes.

Q. —in Chicago?

A. In the Chicago district.

Q. Where?

A. Indiana Harbor, Indiana.

Q. How far south from Chicago is that?

A. Oh, that is probably 25 miles.

Q. Has any been produced in Chicago or in Evans-1583 ton since October, 1938?

A. No, sir.

Q. Now you told us before noon that you have, since October, 1938, shipped conduit from your plant at Evanston?

A. That is correct.

Q. Where do you get that conduit?

A. We purchase it from Youngstown, or from the other suppliers.

Q. And where is it shipped to you? From what point is it shipped to you by those suppliers?

A. By those what?

Q. Suppliers?

A. It would be shipped by Youngstown Sheet & Tube Company from Struthers, Ohio.

By Fretz-Moon Tube Company at Butler, Pennsylvania.

By Enameled Metals Company at Etna, Pennsylvania.

Q. And that is the conduit that you have been shipping from Evanston since 1938?

A. Yes, sir.

Q. Have you had in storage in other American cities, such as St. Louis and Philadelphia, consigned stocks

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since October, 1938, from which you made shipment for filling orders of wholesalers who had consigned stock agreements with you?

A. That question is a little bit involved. I would answer it this way: That we carried no factory warehouse stock in St. Louis, whereas we did carry a warehouse stock in Philadelphia.

1584 We also may have had consigned stocks or open account stocks in St. Louis and Philadelphia.

Q. And have you since October, 1938, carried the so called warehouse stock in Philadelphia?

A. Up to the time of our ability to maintain a stock; due to the scarcity of the product.

Q. And that was up until sometime last year?

A. Up until the early part of this year.

Q. And where did you secure that stock stored in Philadelphia?

A. We secured that principally from Youngstown Sheet & Tube Company.

Q. Struthers, Ohio?

A. Struthers, Ohio.

Q. To your knowledge has there ever been a base price established in Philadelphia?

A. No, sir.

Q. Or any point nearer Philadelphia than Pittsburgh, Pennsylvania?

A. Not to my knowledge, except you may consider that when we sell FOB our warehouse Philadelphia we may be establishing an FOB price Philadelphia.

Q. Have you ever issued a published price card showing prices FOB your warehouse in Philadelphia?

A. No, sir.

Q. You have never informed the trade, then, 1585 through price cards, that the trade could buy FOB your warehouse in Philadelphia?

A. I would say yes; through our sales agents.

Q. Through your price cards.

A. Not through our price cards.

Q. You never openly published that fact to your trade, is that correct?

A. That is correct.

Q. Now on cross-examination you told Mr. King that you have established basing point prices for your com-

pany at Pittsburgh and at Chicago. Do you recall that testimony?

A. Yes, I recall that testimony.

Q. Will you please look at your price cards which are in evidence here within Commission's Exhibit 56 and point out to us and make it clear on the record as to any Pittsburgh basing point price which you established for your company?

A. Let me get this clear, when you say "that you established." You mean the company, don't you?

Q. It was my understanding when you were talking to Mr. King on cross that you figured out the establishment of these prices.

A. I just want to make a distinction that I had nothing to do with the actual establishment of prices prior to 1938 but my statement still stands that someone in a responsible position with our company reserved the
1586 right to establish the prices that we published.

Q. But I am asking you to point to any price set forth in that exhibit 56 where you or your company established as a basing point price for Pittsburgh.

A. Taking Exhibit 56-D. This tabulates the prices on various sizes of conduit designated as Galvakote and Enamelkote, on a Pittsburgh basis.

Q. And when you answered Mr. King's questions on cross, you were referring to the action of your company in setting forth such Pittsburgh prices as basing point prices as appear in Commission's Exhibit 56-D, is that correct?

A. And subsequent issues.

Q. Well, point out any others.

A. Well, all through our price cards, up to card 84, we have done the same thing.

Q. That's what you meant, then, when you answered Mr. King's questions that you established prices on a Pittsburgh basing point price?

Trial Examiner Norwood: You mean you really made that basing point price from your own calculations and announced it to the trade without reference to what others were charging?

Mr. King: He didn't say that, sir.

The Witness: I wouldn't answer that in the affirmative.

We published the Pittsburgh prices in our price
1587 cards as satisfying ourselves that we would be able

to sell our goods at those prices, taking into consideration our costs of material and our distribution costs.

Q. Well, did you say that you originated that base price or met somebody elses base price on it?

A. I would say, in the case of the Pittsburgh basing price as shown on those cards in evidence, were published by us because we found them to be satisfactory and were satisfied that we were merely following some price leader.

Q. Then they had been published by somebody else prior to that time, is that right?

A. That's right.

There are some exceptions. For instance, in card No. 80 we didn't see fit to carry certain duplicate columns of prices, particularly on small quantities. We eliminated those entirely, both from the Chicago and Pittsburgh base. We didn't follow any trade.

Q. But with that exception, Mr. Hula, can you cite us any instance where you ever published in your price cards a basing point price FOB Pittsburgh which was not at that time used by your competitors?

A. I can't point to a specific instance where there was any variation.

Q. Are you at this time able to point to any instance where you named a price, which was not also a price 1588 of your competitors, as they had been published at in their price cards?

A. Yes, I think on our card 80.

Q. I said, with the exception where you set up different columns in your card 80?

A. I don't recall to mind any specific instances, no.

Q. You have no recollection?

A. No; other than that one.

Q. Why in those instances, then, where you have published your cards naming a specific price as a basing point price at Pittsburgh, did you select a particular number of cents per hundred feet that you did select?

A. Because we felt at the time we published those prices that those were the price, leader's price, and that was our competition.

Q. You didn't select in some instances $5.25 a hundred feet at one time as against $5.73 another time, because there was a difference in cost justifying that difference in price, but because your competitors had made that change, is that correct?

A. Partly so. Our costs might have justified a higher price but we couldn't afford to publish a higher price. Therefore we followed the price leader.

Q. Do you mean that you want us to understand here that your costs' advances and declines precisely in the same proportion as your competitors' costs advances and declines?

A. No, sir.

1589 Q. Why, then, do you find it necessary to advance your price by precisely the same amount and lowered by precisely the same amount as your competitors?

A. Simply because that was the measure of competition that we had to meet in the general market.

Q. Now are you wanting us to understand that you raise and lower your prices because of action of competitors, rather than of some element within your company?

A. In so far as the publication or establishment of a Pittsburgh base, yes.

Q. So everything that you have explained to Mr. King on cross-examination would have to be controlled by that answer of yours, is that correct?

A. Not everything, because I think we do control the publication and the level of the Chicago base price which we set.

Q. We are talking about Pittsburgh, at the moment. It would be controlled by the answer which you gave with respect to the Pittsburgh base price, is that correct?

A. Generally, yes.

Q. Now coming to the Chicago base price. Have you named a Chicago base point price in your price cards which you have published in your trade which had not also been named by your competitors?

A. Yes. In the very beginning we were the only

1590 ones that published a Chicago base.

Q. I am talking about, now, in any cards issued by your company during this period of time, shown by cards in Commission's Exhibit 56 from 1934 to 1941. What is your answer as to that?

A. I don't know that I understand that question thoroughly.

Q. I am asking you about that period of time: As to whether you can cite, in any instance, where you have named a Chicago basing point price which had already not been named by your competitors?

A. Offhand I could not answer that question.
Q. You have no knowledge of your doing so?
A. I have no definite knowledge.
Q. Have you ever given consideration to the establishment of a basing point from Struthers, Ohio, from which certain shipments are made for your accounts from Youngstown Sheet & Tube Company?
A. No, I have not.
Q. Or from Etna, Pennsylvania, from which shipments are made for your accounts by the Enameled Metals Company?
A. No, sir.
Q. Or from Butler, Pennsylvania, from which shipments are made by the Fretz-Moon Tube Company for your accounts?
A. No, sir.
Q. Why?
1591 A. Simply because the percentage of the tonnage that was shipped from those points wouldn't justify my establishing a base point at a point that I didn't have any control over.
Q. What do you mean you didn't have any control over?
A. I don't control the manufacture of the material at those points.
Q. Naturally, you don't establish basing point prices, is that correct?
A. That's right.
Q. All of that, despite the fact that you have carload shipments of goods made from those points to various destinations for your accounts?
A. That's right.
Q. Do you control the production of conduit in Pittsburgh?
A. No, sir.
Q. In any degree?
A. No, sir.
Q. Why do you include, then, the Pittsburgh basing point price instead of Butler?
A. For this reason: that the first conduit that was ever made in this country was made in Pittsburgh, and the business was established throughout the United States on a Pittsburgh selling cost, plus the freight. And as we came into the picture, we naturally met the competitive
1592 situation that existed at the time.

Q. And it became a habit from which you haven't been able to get away; is that correct?

A. I don't want to leave the impression that we haven't been able to get away from any habit. We do have some control over the extent of sales that we desire to make in any particular market. There are some markets that are not attractive to us.

Q. I am talking about the use of the method in figuring prices from Pittsburgh now. I am talking about the volume of your sales in any particular market.

Mr. Stewart: Just a moment. As I understand it, you are talking about habit now.

Mr. MacIntyre: Habit of using Pittsburgh.

Mr. Stewart: Stick to the habit, and just get the habit of sticking to the question.

By Mr. MacIntyre:

Q. Do you understand the question, Mr. Hula?

A. Yes, I think I do.

Q. What is your answer?

A. I don't think we consider that a habit. It is the best economic method or basis on which a delivered price can be determined.

Q. But you are in the habit of using it, and you haven't been able to get away from the habit?

1593 A. Not entirely in the habit of using it. We deviate from it.

Q. In your price cards, have you ever deviated from it?

A. Not in the price cards.

Q. Well, is it a habit, then, of yours of including it in the price cards? You will admit that, then, won't you?

A. I will admit that.

Q. And you haven't been able to get away from the habit of using it in your price cards, have you?

A. Well, I will have to answer that: yes, we have not been able to get away from the habit. If it means anything.

Q. And you haven't been able to get away from it, because you want to do what your competitors do; is that correct?

A. No; because we want to be competitive without competitors in all markets.

Q. And what do you mean by being competitive, then?

A. To be able to sell a bill of goods to a customer on a definite price basis, so that we will know whether or not we have an opportunity to get any of the business.

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Q. And you mean by that, making your delivered price quotations the same as your competitors'?

Mr. King: He didn't say that.

A. No. Just a method.

Mr. King: I object to the question.

Trial Examiner Norwood: Objection overruled. He
1594 is asking him if he doesn't mean that.

By Mr. MacIntyre:

Q. What do you mean by the term being competitive, if it isn't that?

A. I mean by that that you have got to quote the customer a price that will be attractive to him on an equal price basis, or something lower, and it might as well be higher.

Q. Well, do we understand you to mean now that the term being competitive means to you lower prices, higher prices, and the same prices, as your competitors'?

A. Yes, sir.

Q. In other words, any old price as your competitor?

A. Yes, sir; depending on the conditions.

Q. So when you named the same prices as your competitors on a basis of Pittsburgh basing point price, you are not necessarily being competitive in the term that you just used; is that correct?

A. Not altogether.

Q. If you had no competition at all with any other person selling rigid steel conduit, and you issued your price cards naming the basing point prices which you do include in them, that is the price you would get for your merchandise, is it?

Mr. Stewart, I object to that as being manifestly an absurd question on its face. If there was no competi-
1595 tion, I would assume they wouldn't issue any price cards. What point would there be?

Trial Examiner Norwood: Read the question.

(Last question read.)

By Mr. MacIntyre:

Q. In all instances?

A. I would like to have that question cleared up as to whether you mean Pittsburgh or Chicago base.

Trial Examiner Norwood: Just a minute. I want to understand that question. Read it again, please.

(Complete question read.)

Trial Examiner Norwood: That may be leading up to something, I don't know. I will let him answer. Objection overruled.

A. I am assuming, the way you put the question, you mean the publication of the Pittsburgh prices, and the Chicago prices, that we now publish; and upon that basis, which would be theoretical, of course, I would say yes, we would get those prices.

By Mr. MacIntyre:

Q. In all instances, if you had no competition?

A. Yes, that would be possible under a theoretical situation.

Q. Well, now, confine the question to the Chicago basing point price that you publish, you would in all instances
1596 get that if you had no competition from anyone; is that correct?

A. It would be less difficult to obtain business at the full published prices.

Q. But if you had no competition you would get that price in all instances; is that correct?

A. I don't believe you would.

Q. Why?

A. Some buyer might think he is entitled to a better price because of quantity or because of certain other conditions, reciprocity or some other factor.

Q. Do buyers come to you and attempt to get better prices from you from your cards on such a basis, or because of so-called competition?

A. We have had customers come to us using a reciprocity argument to justify a low price.

Q. What do you mean by reciprocity, Mr. Hula?

A. I mean by that where they supply us material, we supply them other materials, they feel they are giving us a nice volume of business, which is profitable; that we should work together, make a concession.

Q. With those exceptions, you think you would get your basing point price in Chicago, if you had no competition, in all instances?

A. I think that is purely speculative. I don't know.

1597 Q. You told Mr. King on cross-examination, though, that the instances where you have deviated from your price cards in the actual prices you charge were because of competition; do you recall that?

A. Yes.

Q. Well, now, I am asking you if you had no competition, you wouldn't make such deviations in those instances, where you can make them because of competition; is that correct?

A. Generally, yes.

Q. And that is what has given rise to this question, which I again ask you: If you had no competition, you would get your Chicago base on all of your sales?

Mr. King: Your Honor, I want to be as patient as anybody in the world, but it seems to me we have been around that barn now six times, and if Mr. MacIntyre wishes to tell me why he wishes to keep repeating, why—

Trial Examiner Norwood: I think he had that question answered, yes. Objection sustained.

By Mr. MacIntyre:

Q. On cross-examination, you told Mr. King that you weren't particularly interested in using your price cards in quoting prices; that you didn't consider them price quotations. If you don't do that, then, for what purpose would you use your freight adder books?

A. There is a very definite purpose for which the 1598 freight adder books are issued.

Q. What is that?

A. They are for the accommodation of jobber trade.

Q. In doing what?

A. To determine the prices at which they might wish to quote to other points besides the jobbing point in which they do business.

Q. And they would, in connection with the use of such freight adder books or delivery charge booklets, use your price cards; is that correct?

A. To a certain degree.

Q. How would they know where to start, if they didn't have a price card to start with in the use of the freight adder books?

A. They would start with the price book and freight adder,—

Q. That is price card?

A. —and include in that figure the cost of warehousing and handling the product through the warehouse.

Q. But both the price card and the freight adder book would be utilized?

A. That's right.

Q. And do you have knowledge of the fact that they are so utilized by yourself and your jobbers?

A. Yes, I think that is conceded.

Mr. MacIntyre: That is all.

1599 Trial Examiner Norwood: Any further questions?

Mr. Austin: May I ask a question?

Trial Examiner Norwood: Yes.

By Mr. Austin:

Q. Mr. Hula, you have just stated that you have knowledge of the fact that freight adder books and price cards are used by your jobbers.

A. Yes, sir.

Q. Do you mean that to be a comprehensive answer or merely that you know that certain of your jobbers have received those books and, therefore, have the opportunity of using them?

A. I didn't mean to be so comprehensive as to say that all jobbers use them. Certain jobbers use them that have occasion to use them.

Q. Those books are supplied to your jobbers?

A. They are supplied to all of our jobbers. I don't know whether they are supplied to my competitors' jobbers.

Mr. Austin: That is all.

Trial Examiner Norwood: Thank you, Mr. Hula.

Mr. Robison: Mr. Trial Examiner, may I ask Mr. Hula one further question before he goes?

Trial Examiner Norwood: Certainly.

By Mr. Robison:

Q. You were asked whether Evanston is in the
1600 Switching limits of Chicago, or a question to that effect. Do you recall that question?

A. Yes, sir.

Q. I want to ask you whether freight rates from Evanston to outside points are the same as freight rates from Chicago to the same points.

A. They are.

Mr. Robison: That is all.

Mr. MacIntyre: I want to ask one question on that point.

Redirect Examination by Mr. MacIntyre.

Q. You spoke about freight rates there in your answer from Evanston and from Chicago. Now, I want to ask you, you having been a freight rate man prior to the time you were with Clayton Mark, if it is a fact that the freight rates from Evanston and Indiana Harbor to various points within the switching limits of Chicago are different to different locations?

A. I would say that there would be some variation due to the number of switching lines employed in making the moves.

Q. You know that to be a fact, don't you?

A. That is a fact.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Thank you, Mr. Hula.

1601 Trial Examiner Norwood: Call your next witness.

Mr. MacIntyre: Mr. Quinn.

Trial Examiner Norwood: L. R. Quinn.

L. R. QUINN, a witness called by and on behalf of the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. What is your business or occupation, Mr. Quinn?

A. Vice president of Enameled Metals Company.

Q. What is the nature of your duties in holding that position?

A. The usual duties of a vice president and an executive officer of the company.

Q. Do you have anything to do with the sales in that connection?

A. I do.

Q. What do you have to do with the sales?

A. I have charge of them to a general extent.

Q. And would it be correct to say, then, that you are vice president in charge of sales?

A. And other parts of the company as well.

Q. And how long have you held that position?

A. Since 1919.

1602 Q. That company, the Enameled Metals Company is one that is named as a Respondent here?

A. That is correct.

Q. And it engages in the manufacture and sale of rigid steel conduit?

A. It does.

Q. In Etna, Pennsylvania?

A. That is correct.

Q. And where is Etna, Pennsylvania, located?

A. About 6 miles from the heart of Pittsburgh. It is on the—it is right in the general section called Pittsburgh, as far as business is concerned. Pittsburgh is on one side of the river and Etna on the other.

Q. Over what territory do you solicit business and make sales of rigid steel conduit, Mr. Quinn?

A. The entire United States and its possessions.

Q. And in making such solicitation has your company issued so-called price cards?

A. That is correct.

Q. Publishing prices to the trade?

A. That is correct.

Q. And they carry consecutive numbers, one to the other, such as No. 69?

A. Yes.

Q. No. 70?

1603 A. That's correct.

Q. Now, beginning with No. 69, will you give us the numbers of the cards that your company has since then issued?

A. Up to and including 85?

Q. Well, 84 is all right.

A. We have also published an 85, which we are selling under.

Q. I think 84 was the last one before this Complaint was issued, so include all between 69 and 84 by numbers that you have issued.

A. Without having the benefit of my price book with me, I think we published all but 79 and 82; we never published 79 or 82.

Q. I don't know that we have all of yours in evidence, but I would like to ask you and your counsel to submit to us any of your price cards with those numbers which we do not have at this time, and which you can furnish.

What do you have to do with the preparation, publication, and distribution of those cards?

Mr. Stewart: In answer to that request, there is one we didn't publish, 73, I think.

The Witness: There may have been—I say, without benefit of refreshing my mind, I remember those two because they were recent.

1604 Mr. Stewart: Otherwise, I think we have given Mr. MacIntyre all we have published.

(The following portion of the last question was read: "What do you have to do with the preparation, publication, and distribution of those cards?")

A. Well, naturally, in conjunction with the other executive officers of the company, we discuss all price changes and the preparation of them and the distribution of them.

By Mr. MacIntyre:

Q. You are acquainted, then, with the stated provision in your price cards as to the method to be used by your customers in determining delivered price quotations through the use of your cards?

A. That is correct.

Q. And you know that your competitors throughout the period that you have been issuing your cards, 69 to 84, issued price cards carrying statements providing for the determination of delivered price quotations in exactly the same way; is that correct?

A. I can't answer that. I haven't seen all of our competitors' price cards. I have seen some of them.

Q. Those you have seen you know carry provisions for such—carry such provisions?

A. I would say approximately. I can't tell you as
1605 to exactly whether they are the same as to wording, but the result is the same.

Q. The method?

A. The method is the same.

Q. You have seen price cards of the National Electric Products Corporation?

A. I presume I have.

Q. Well, can't you tell us, Mr. Quinn, whether you have or you haven't?

A. Well, I assume I have. At various times in the field I have seen everybody's price cards.

Q. Did you ever see one that did not carry a provision for figuring prices in the manner that yours do?

A. No, I don't know that I did.

Q. Have you ever seen a price card—that is, of your company or any of its competitors—which provide for FOB mill prices, without any statement that the delivered

cost to the buyer should be determined by taking a basing point price plus freight to destination?

A. We regularly sell FOB mill.

Q. Have you ever seen any price cards of your company or your competitors which provided for FOB mill sales?

A. I would have to read the card over very carefully to determine that. 20% of our business is sold FOB mill.

Q. I show you price cards—that is, the portions of
1606 them which we have here—I imagine they are complete—in evidence as Commission's Exhibit 63.

Mr. Stewart: Is that an insinuation or an observation on your part? I don't like that.

Trial Examiner Norwood: What?

Mr. Stewart: "I imagine they are complete."

Mr. MacIntyre: I certainly do, on the basis of statements made to me; I imagine I have them all.

Mr. Stewart: Why don't you leave that out? What is the point? We have given you all we have. If you don't have them, say so. We will furnish them.

Mr. MacIntyre: I understood, from the statement Mr. Stewart made to me at one time I talked to him about these price cards, that he was not certain they had all the price cards they had issued. The flood had taken away part of their records, and he had given us all they could locate, and I certainly think, on the basis of that, and plus what the witness has told us from the stand, I am entitled to make a statement such as I have, that I imagine that these were all that were issued.

Trial Examiner Norwood: I ask counsel to close this discussion, and ask counsel to complete his question,

(Last question read.)

By Mr. MacIntyre:

Q. Can you find—

1607 A. I can't find anything in here that says you have to add the freight. Only on consigned stock sales.

Q. Can you find anything in there that tells the buyer that he will be permitted under the method you quote there, to buy FOB your mill?

A. I don't see anything in here that says he can't.

Q. Do you find anything in those cards that tells him he can?

Mr. Stewart: He wants to know if there is any expression, statement, that he can?

A. I don't see anything either way.

Trial Examiner Norwood: Aren't those cards in evidence?

Mr. Stewart: Yes, they are in evidence. I don't know what the argument is about.

Trial Examiner Norwood: Off the record.

(Discussion had off the record.)

Trial Examiner Norwood: On the record.

By Mr. MacIntyre:

Q. Is there any provision in any of the price cards of your company which are in evidence here and which are now before you, which, as you understand them, provide for FOB mill quotations?

A. I would say that the Pittsburgh base card itself would mean FOB our mill. That is where our mill is.

1608 The Pittsburgh base would mean FOB mill.

Q. Is there any provision in that card that explains to the buyer that he can come to your mill and buy on a basis of the Pittsburgh basing point price?

A. I don't see anything that explains that he can and, by the same token, there is nothing that says he can't.

Q. But is there any provision there that, as you see it, explains to him that he can?

Mr. Stewart: Just a moment. I am going to raise the question the document speaks for itself, and the interpretation is for the Trial Examiner and Commission, and not for the witness, and I, therefore, object.

Trial Examiner Norwood: Objection sustained.

1609 By Mr. MacIntyre:

Q. I will put a different question to you.

Isn't it a fact, Major Quinn, that in sales and shipments to your customers at prices which are as provided for in your price cards, you receive greater mill nets from your customers nearer Pittsburgh than you do from your customers who are located nearer Chicago?

A. That is correct.

Q. And why is that?

A. Because of the conditions in Chicago, we have to absorb some of the freight to Chicago.

Q. That is, you do that in following the practice in the industry, in quoting on a Chicago and a Pittsburgh base?

A. That is correct.

Q. Plus freight from each of those bases?

A. And by the same token, that is the reason we sell very little in Chicago or its environs.

1610 Q. But you do have some customers?

A. A few, yes; very few.

Q. Your price cards specify that to determine delivered cost you will add to the basing point price certain freight factors?

A. That's right.

Q. Where do you secure your information as to the freight factors?

A. Our traveling manager obtains them from the publications of either the ICC or the various rating bureaus whose service we engage; the Central, and Southern, and Western. They are publications authorized by the Interstate Commerce Commission, and we get the rates from them.

Q. And have you secured freight rate information for such use from any other source?

Mr. Stewart: You mean at any time?

A. You mean initially, or the check-up? Initially, we have not. We always check what we establish. We check that with anything we can get our hands on; a publication of a competitor, or anything else, but initially we get our own.

Q. From what sources have you secured your information on which you have checked this initial information against?

A. You mean the company, of course, when you say "you"?

Q. Yes.

1611 A. You mean the company?

Q. Yes.

A. As a general rule the traffic managers know approximately 30 days in advance of a price change, and when they hear of a change in rate, they, themselves, commence to discuss with each other what are the rates and whether they understand the rates correctly, and the result is that after we have prepared our rates, we usually wait until we see the publication of one of our competitors, because we are not a tremendously large company, and we wait until we get the publication of one of our competitors and our traffic manager checks our rates with the other company's, and if there is any deviation he attempts to find out whether he is right or wrong in his calculation.

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Q. Or whether the competitor is right or wrong?

A. Or whether the competitor is right or wrong.

Q. And is it your testimony that your men in your traffic department have not secured freight rate bulletins from the Rigid Steel Conduit Association?

A. We never received any from the Rigid Steel Conduit Association.

Q. Or from Charles Donley?

A. Or from Charles Donley.

Q. Major Quinn, I am showing you Commission's Exhibits, for identification, 700-A to 700-O (handing
1612 documents to the witness). Can you tell me what the source of information is that appears in that document?

A. The exact source that I have just described.

Q. You mean from a competitor or—

A. From the publication of the freight rate tariffs.

Q. Did you print that in your establishment—

A. That was printed by some local printer.

Q. Would you say it was printed by Joe Franz?

A. I would, because he does all of our price card and rate printing. Most of our office printing, too.

Q. Is it your testimony that Mr. Franz did not use the same plate in printing that, except for the outside cover, that he used in printing similar publications for Charles Donley?

A. I haven't the slightest idea what plate he used. We give him the order to print the freight bulletins and send down the data; and what forms he used, I haven't the slightest idea. I have never been in his plant.

Q. You don't know whether he uses the same plate or not?

A. I do not.

Q. But you do know you got it from Mr. Franz?

A. That is right.

Mr. MacIntyre: Your Honor, I offer this into evidence, Commission's Exhibit 700-A to 700-O, as a freight
1613 rate bulletin of the Enameled Metals Company, Schedule No. 4, May 25, 1940.

By Mr. MacIntyre:

Q. Your company used that, did it?

A. That is correct.

Trial Examiner Norwood: Any objection?

Mr. Stewart: None.

Trial Examiner Norwood: Received as marked.

COMMISSION'S EXHIBITS NOS. 700-A to 700-O, were offered and received in evidence.

By Mr. MacIntyre:

Q. Your company paid dues to the Rigid Steel Conduit Association during 1937, didn't it, Major Quinn?

A. That is correct.

Q. Is it your testimony that none of the funds that you paid in as dues to that Association were used as dues by it as incidental to the expenses incurred by the Association in having Charles Donley to prepare freight rate bulletins and send them to the Association for distribution?

A. There was a bill paid to Mr. Donley which was contrary to my likes, and which I stopped, as treasurer of the Association. It was paid to him to avoid any unsatisfactory comments.

Mr. Donley was engaged by the National Electric Products to be their traffic manager, and in a discussion of 1614 freight rates, in some way or other, he sent, through Booth, to the industry, a request to furnish them with their bulletins and which he was going to furnish for a certain price, and on which he was going to make a profit.

When I heard of this, I objected to the procedure and refused to buy any bulletins and refused to sign his check, as treasurer of the Association, and finally the Association voted to pay the expenses he had incurred up to that time, but he was to have nothing more to do in any manner, shape, or form, with the freight rates of the Association.

Q. But part of the money that you had paid in to the Association was used to pay that debt?

A. Obviously.

Q. You were a member of the Board of Directors of the Association during that period of time, were you?

A. That is correct.

Q. And you did continue to be a member of the Board of Directors for some considerable period thereafter?

A. I was a director from the time the Association was started until it was finally closed.

Q. And when do you say it was closed?

A. I think it was the 31st of May in 1940. We operated one year after the Organization Service discontinued to be associated with us.

Q. Major Quinn, do you recall a visit paid to your

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1615 office by Mr. S. L. Williams, an investigator of the Federal Trade Commission, during 1940?

A. Yes, sir.

Q. During the course of which he asked you a number of questions?

A. Yes, sir; he asked us a lot of questions.

Q. Do you recall that he asked you some questions about the Organization Service Corporation at that time?

A. I couldn't recall. He may have.

Q. Please tell us about the date which the Organization Service Corporation was employed by the Rigid Steel Conduit Association.

Mr. Stewart: You mean what is the date?

Mr. MacIntyre: Yes.

A. My recollection is that they were employed about November, 1936; it was right after the Robinson-Patman Law was passed, I know that, and it was in connection with that law that their services were engaged.

By Mr. MacIntyre:

Q. Your price card No. 74 was in effect at the time that they came into the management of the Association?

A. My recollection is yes. You would have to let me see the card. I would say that that is the correct number.

Mr. Stewart: Will you let the record show that Mr. Quinn asked Mr. MacIntyre to let him see the card so
1616 he could check his recollection?

Mr. MacIntyre: I didn't understand the witness' statement.

By Mr. MacIntyre:

Q. (Handing document to witness.) Supposing you just hold this and I will give you the numbers of them.

A. I would say, Mr. MacIntyre, that 73 was in effect when Blake was employed.

This card, as far as our company is concerned, my recollection was Mr. Blake was engaged about the 1st of November, and card No. 74 was on November 17th.

We hadn't published 73. So we were operating under card No. 72 when he was employed.

Q. And how long did 74 remain in effect?

A. Until February 25, 1937.

Q. Do you recall that while that card 74 was in effect that you attended a meeting of the National Electrical Wholesalers Association in Buffalo, New York?

A. While 74 was in effect?

Q. Yes.

A. I would say I did not, because the convention of the Wholesalers is usually in October, and this card is dated November, so I would say that this card was published after the Wholesalers' meeting in Buffalo.

I might be wrong about that, but that would be my
1617 guess because their meeting is in October, always.

Q. Do you recall you attended a meeting in Buffalo of the National Electrical Wholesalers Association about the time the card became effective, or at the time it was in effect?

A. By "about" you mean within what range?

Q. You said October, as being about the time of the meeting.

A. I would say I attended in October, because I have a summer home in that district, and I closed my summer home at the same time.

Q. October, 1936?

A. Yes.

Q. Do you recall whether or not that representatives of other conduit manufacturers were present at that meeting?

A. Why, as a rule, every company is represented at every jobbers' association meeting, because it is the only place you can see all of your customers at one time and entertain them.

Q. Do you recall whether or not that at that meeting in Buffalo about which you have just told us, the National Electrical Wholesalers Association, through its conduit committee, requested the rigid steel conduit manufacturers to set up a consignment method of selling, and to adopt resale prices to be placed in use by the wholesalers?

A. That would be an impossible question. We had
1618 been selling on a consignment agreement for ten years previous to that, and a much more rigid agreement than the present one.

Q. Don't you recall that a request of that character was made, irrespective of what you had been doing?

A. No, I do not.

Q. Is it your testimony that no such request was made?

Mr. Stewart: I don't think that is quite fair. If it was in writing, let the writing be produced.

As I understand, the witness said he didn't recall it, that's all, and then you ask him: Is it your testimony it wasn't?

Trial Examiner Norwood: I think he may probe his memory on that.

Mr. Stewart: I know, but it seems to me the form of the question is not proper. The witness says he didn't recall it. He didn't say it didn't happen.

Trial Examiner Norwood: Read the question.

(Last question read.)

Trial Examiner Norwood: Objection overruled.

A. I haven't the slightest recollection of it. It may have been, or it may not have been.

Trial Examiner Norwood: You wouldn't testify that it wasn't made?

The Witness: No, I would not. I have no recol-
1619 lection of it one way or the other.

By Mr. MacIntyre:

Q. Major Quinn, don't you recall that a request was made of that character by the group to which I have referred and that you and the other manufacturers replied that they should make a study of their costs for distribution, and present it at a meeting of the manufacturers to be held later?

A. You are talking about a consignment agreement now?

Q. Yes.

A. I have no recollection of anything about a consignment agreement.

I have a recollection about the cost, but that has nothing to do with consignment. That was the form of a card.

You understand, as far as a manufacturer is concerned, he only has one figure, that is, the net return to him, and the balance of the card means nothing to him one way or another.

Q. Do you recall, Major Quinn, that after this meeting in Buffalo, you and the other rigid steel conduit manufacturers advised Herbert S. Blake, of the Organization Service Corporation, that the Wholesalers desired that a uniform consignment stock agreement be worked out, and that you requested him to make a study of that for the purpose of working it out?

1620 Mr. Stewart: Let me get that question.

(Last question read.)

A. I do not recall the jobbers asking us and my stating so to Mr. Blake. We did ask Mr. Blake to make out a

consignment agreement, but it was from the manufacturers; not the jobbers.

By Mr. MacIntyre:

Q. Don't you recall that he advised you that he had made a study—shortly thereafter—that he had made a study of the consigned plan of selling, and found that it would be feasible to work out a consignment stock agreement, a uniform consignment stock agreement for use by all conduit manufacturers?

A. I think that is correct, yes.

Q. And do you recall that shortly after he made that report to you, that on January 6, 1937, that you and other manufacturers of rigid steel conduit, in a joint meeting with representatives of the National Electrical Wholesalers Association at the Biltmore Hotel in New York, met to discuss that problem?

Mr. Stewart: I am sorry. I was interrupted, and I didn't hear that question.

Trial Examiner Norwood: Read the question.

(Last question read.)

Mr. Stewart: You mean the consigned stock contract?

1621 Mr. MacIntyre: Yes. The adoption of a uniform consigned stock agreement.

Trial Examiner Norwood: Answer the question.

A. I don't know whether the jobbers there were representing the National Electrical Wholesalers or not.

We did have a meeting with some key jobbers from all over the country. Whether they represented themselves or the National Electrical Wholesalers Association, I have no knowledge. We did have a meeting with such a committee of jobbers.

Q. And do you recall that meeting was opened by Mr. Blake?

A. It was opened by Mr. Blake.

Q. And then he left the meeting with a remark that it should not be considered as an Association meeting?

A. That, I couldn't say.

I presided at the meeting myself, and I don't recall his making—he may have and may not. Mr. Blake merely addressed the people there in a friendly gesture, and retired from the meeting.

Q. And returned before the group broke up?

A. I believe he returned for lunch.

Q. Now, what took place at this joint meeting that you recall?

A. The principal point that was discussed at this meeting was the publication of cards that would represent a resale.

1622 In other words, under the Robinson-Patman Law, as we understood it, it was our duty to establish the resale prices of our material if we found a consigned agreement that was in effect at that time, and I don't mean the one Mr. Blake prepared. I mean the one we had had in effect for many, many years, and the card, in effect, as far as our company was concerned, was card 72, which was merely a base cost to the jobber.

As I recall it—and I am trusting to my memory because that was four years ago, five years ago, as I recall—the jobbers brought in there a nation-wide survey of the cost of doing business as a jobber, and the cost showed how much it cost to handle a carload of material—I am talking about the conduit material—and how much it cost to handle 10,000 pounds, and various prices, and they established from this survey what they thought would be a fair compensation to them for the cost of doing business.

Q. And they presented that to you as a basis for your consideration in connection with whatever margin the jobbers contemplated would be set up by you and the other rigid steel conduit manufacturers on their price cards; is that correct?

A. That is correct.

Q. And do you recall who was the chairman of the committee who prepared that cost study?

1623 A. I think Walter Drury was, but I am not certain. Walter Drury presented the figures, but whether he was chairman or not, I am not sure. He presented the figures.

Q. Would you say that Mr. J. G. Johannesen was chairman?

A. I don't remember that Mr. Johannesen was there.

Q. You remember seeing the report, do you?

A. Seeing the report of what?

Q. The report of this cost study that was made?

A. Yes. They were read to us. They weren't presented to us.

Q. You saw them?

A. Yes.

Q. Don't you recall that his name was shown on the report as the chairman of the committee which drafted it?

A. No, I do not. I don't know that it wasn't, but I don't remember. I never personally saw the report that was read.

Q. What did the manufacturers do after this report was submitted to them in that manner, for their consideration?

A. I don't recall any cooperating movement among the manufacturers.

We naturally discussed it with different manufacturers, but I don't recall that there was a subject of discussion by any meeting as a group.

Q. Don't you recall, Major Quinn, that you told
1624 Mr. Williams in 1940 that at the very next meeting of the Rigid Steel Conduit Association the figures thus presented by the jobbers at the joint meeting, was discussed by the manufacturers?

Trial Examiner Norwood: Read that question.

(Last question read.)

Mr. Stewart: "At the joint meeting"? You mean he told Mr. Williams that? That there was a joint meeting? Or are you putting that in, yourself? As to what he told Mr. Williams?

Mr. MacIntyre: I am asking Major Quinn, now, if he recalls that he told Mr. Williams that these figures which were presented to the manufacturers in the joint meeting at the Biltmore Hotel on January 6, 1937, were discussed at the very next meeting of the rigid steel conduit manufacturers.

Mr. Stewart: Are you putting in the joint meeting feature yourself, or are you saying that's what Mr. Quinn told Mr. Williams? I object to the form of the question as not being clear.

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. I don't recall making that statement to Mr. Williams, but if it was discussed in the next meeting of the manufacturers, it will be part of the minutes of the
1625 next meeting.

Trial Examiner Norwood: We will have a ten minute recess.

(Recess taken.)

1626 Q. Do you recall that at the meeting of the manufacturers, rigid steel manufacturers in New York on January 27, 1937, that uniform consignment contract form as proposed by Mr. Blake was formally adopted?

A. I am not certain as to the date. There was a meeting in which we adopted a uniform consignment agreement. Whether that is the particular date or not, I am not certain.

Q. I show you Commission's Exhibit No. 11, A to L, minutes of the meeting of the Rigid Steel Conduit Association January 27, 1937, and I will ask you to state if they will refresh your memory and recollection on that point? Does that refresh your memory now?

A. I haven't found it in here yet.

Q. Would you say it was approximately that time?

A. I would say it was approximately that time.

Q. I believe that will save a little time.

Do you recall, Major, at a meeting of the Rigid Steel Conduit Association members during January, 1937, and at others that followed that, that there were discussions of freight charges and adders, and in that connection expressions of opinion that each manufacturer might not figure their freight rates in the same way, and thereby take advantage of each other unless they had a common freight rate factor to use in computing prices?

A. I do not recall any such discussion.

1627 Q. At any time in the Association meetings?

A. At any time.

Q. Do you recall having told Mr. Williams that you did?

A. No, sir.

Q. Do you recall having told Mr. Williams that it was for that reason that a transportation or traffic committee of the Rigid Steel Conduit Association was appointed?

A. There had been a traffic or transportation committee for years.

Q. What was its function?

A. Simply to check and see that the rates as published were the actual rates of the Interstate Commerce Commission.

Q. As published by whom?

A. By the individual companies.

Q. In other words, try to keep them all correct, so to speak?

A. That is correct.

Q. And do you recall who constituted that committee?

A. You mean—when? Which committee, now?

Q. This transportation committee or traffic committee of the Rigid Steel Conduit Association, during 1937.

A. I think it was Mr. Kim, Mr. Mathews, and Mr. Welsh.

Q. Do you recall that after the consignment stock form agreement was adopted by the Rigid Steel Conduit Manufacturers as proposed by Mr. Blake, that he proposed
1628 a specific building contract form which you also adopted?

A. I don't know whether he proposed any forms or not.

Q. Don't you recall you told Mr. Williams that Mr. Blake had proposed such contract form to you?

A. No, sir, I do not.

Q. And that the manufacturers adopted it?

A. I don't recall that the manufacturers ever adopted any uniform forms.

Q. Do you recall at meetings of the Rigid Steel Conduit Association there were discussions of warehouse stocks being carried by various manufacturers in cities other than at the point of production?

A. I don't recall that having been discussed at association meetings. I have discussed it with individual members of the association myself, at times. But I don't recall any discussion of that in an association meeting.

Q. With how many manufacturers of rigid steel conduit have you discussed that problem at one time?

A. You mean at one time?

Q. Yes.

A. I would say not over maybe one or two.

Q. What was the nature of the discussion that you had with them in that connection?

A. Purely economical, whether or not it was economy to carry a warehouse in certain locations or not.
1629 With our company it had not been.

Q. And you expressed your opinion that it was not economical?

A. Yes, sir.

Q. To your competitors with whom you were discussing it?

A. That is correct.

Q. Did you in that connection also tell them that you did not believe that warehouse stock should be carried of rigid steel conduit?

A. I don't recall making that statement. I may have made the statement that our company had decided that they wouldn't carry them any longer. But I don't recall attempting to put my thoughts in anybody else's mind.

Mr. MacIntyre: I believe that is all.

Trial Examiner Norwood: Cross-examine.

Cross-Examination by Mr. Stewart.

Q. Mr. Quinn—

Mr. Stewart: Will you let me have your exhibit No. 10, Mr. MacIntyre.

By Mr. Stewart:

Q. Mr. Quinn, I call your attention to Commission Exhibit No. 10-C, which are the minutes of a special meeting of the Rigid Steel Conduit Association on December 30th, 1936, and ask you to read the two paragraphs on the sheet marked 10-D, and state whether or not that refreshes
1630 your recollection as to the action, and all the action, taken by the Association in the matter of the uniform consignment contract?

A. It refreshes my recollection in what way, Mr. Stewart?

Q. As to the extent in which the Association acted on the proposed uniform consignment contract.

A. Yes, I would say that it does.

Q. Now, you said in your direct testimony that the Association adopted a form of contract.

A. Well, if I used the word "Association," I did inadvisedly. To the best of my knowledge the Association never adopted anything as an Association. The individual members expressed their opinions, but they individually acted upon any form, or anything they used. As a matter of fact, there were some members—some of the competitors, that never adopted this form of contract.

Q. Is there any other reason that your company has, as a matter of policy, for its method of stating on its price cards the matter of delivered prices?

A. Our card reads very clearly, Mr. Stewart, "carload freight will be added to prices given hereon on all sales from consigned stock agents' warehouses."

Now, for many years we did not carry consigned stocks at delivered prices. I don't know whether it was you, Mr. Stewart, or a previous counsel, that advised us that in order to justify the ownership of a consigned stock we had
1631 to pay the freight, so that we owned the consigned stock entirely. And from that time on we quoted all consigned stock prices delivered. But we do not quote all prices delivered. We are constantly quoting the Government FOB mill. And we have a number of customers that we regularly, and have for years, sold FOB mill. And, as a matter of fact, so far as the Government is concerned, you get into the question of land grant freight rates.

Q. What happens in that connection if they ask for a quotation?

A. If they ask for a quotation, we state—I have the exact form we use, if you would like me to present it. We state—would you like to have the exact form?

Q. No. If you can state it, it is all right.

A. We make the statement on the bill that if shipped on Government bills of lading we will equalize the land grant allowances from all the conduit manufacturers in the country, and we list those points in this quotation.

Mr. Stewart: That is all.

Trial Examiner Norwood: Do you mean by equalizing, to deduct the commercial freight and add on an estimated land grant rate?

The Witness: Mr. Commissioner, there are some railroads in some sections of the country that are not adjacent to our plant, that allow land grants. For instance,
1632 I think there is some points in shipping from Cohoes that they get land grant refunds, the Government, when I say they, the Government gets land grant refunds that we would not be able to include in our routing, so that we equalize with the Government any saving the Government would make through any additional land grant rates that Cohoes—that a shipment from Cohoes would accrue to the Government.

Trial Examiner Norwood: You don't equalize it by simply charging off the commercial freight and leaving your factory price?

The Witness: We take the actual mill price and we add the commercial rate of freight from the mill to destination, then the railroad, by shipping—I mean the Government, by shipping on a Government bill of lading, they

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get a refund, which I think is approximately 50 per cent, on those railroads that have the land grant contract with the Government. Now, to those points that a greater amount accrues to the Government than would accrue to them from a shipment from our mill, we allow the Government that additional amount so that we are competitive with the other point.

Trial Examiner Norwood: Why don't you simply sell to the Government with the commercial rate deducted?

The Witness: We do, if they ask for it. We do, if they ask for it. If they ask—

Trial Examiner Norwood: They don't ask for it
1633 that way?

The Witness: Very rarely. The coast points quite often do.

Trial Examiner Norwood: Would that make you competitive under some circumstances?

The Witness: Yes.

Trial Examiner Norwood: Under all circumstances?

The Witness: That would make us competitive under all circumstances.

Trial Examiner Norwood: Proceed.

By Mr. Robison:

Q. Would that make you competitive as compared with a shipping point of conduit from which the Government got the benefit of land grant rates, if there were no land grant rates between Pittsburgh and the point where the Government wished to use the material?

A. Yes, sir—

Mr. MacIntyre: Just a moment. I object to the question unless the witness in his answer explains what he understands to be the meaning of the term "competitive" as used in the counsel's question.

Trial Examiner Norwood: Objection is overruled. Counsel can bring that out later.

The Witness: Would you please read that question again?

1634 Trial Examiner Norwood: Read the question.

(Question read.)

A. That is correct. That would make us competitive.

By Mr. Robison:

Q. But only through use of this equalization clause?

A. That's right. That's right.

Q. Then it is a combination of the two that would make you competitive?

A. The equalization clause is put in for that purpose, to make our prices competitive.

Mr. Robison: That is all.

By Mr. Austin:

Q. Major Quinn, on your direct examination you were asked questions about a meeting at Buffalo in 1936 of the National Electrical Wholesalers Association; I would like to show you Commission's Exhibit 39-A and ask you to look at the first three paragraphs and see if that refreshes your recollection as to whether or not you attended a meeting of the conduit committee of that Association in Buffalo?

A. Looking at this, I would say I did not.

Mr. Austin: That is all.

Mr. Poskanzer: May I ask a question?

Trial Examiner Norwood: Certainly.

By Mr. Poskanzer:

Q. Major Quinn, you stated on direct examination
1635 all of the manufacturers attended all of the meetings of the National Electrical Wholesalers Association. Did you mean that literally?

A. Figuratively. I mean they attend either with their principals or with their sales agents in the territory.

Q. Have you any independent recollection now of any representative of Cohoes Rolling Mill Company ever being present at any of the meetings you attended?

A. You are talking about the wholesalers?

Q. Yes.

A. No, I can't positively say that I have ever seen any of them, I think I have, but I can't positively say.

Q. You can't positively say that you have?

A. You realize, of course, Mr. Poskanzer, that your agents may be the agents for other manufacturers, and they may be there. I may know them to be your agents—

Q. I am talking about officers of the company, or employees of the Cohoes Rolling Mill Company, not the distributors.

A. Oh. I would say in the last three or four years positively I have never seen any of the executives of the Cohoes Rolling Mills there. But beyond that my recollection doesn't go.

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Mr. Poskanzer: That is all.
Trial Examiner Norwood: Any further questions?
Redirect.

1636 *Redirect Examination by Mr. MacIntyre.*

Q. I again show you Commission's Exhibit 39-A that Mr. Austin just showed you; he asked you if that refreshed your memory whether you attended a conduit committee meeting in Buffalo, on the date shown on that exhibit, and referring to it, does that aid you in any respect in remembering whether you attended a meeting of jobbers other than those meeting as members of a conduit committee in Buffalo, at that time?

A. No, I would not attend any other meeting than the conduit committee. Your time is taken up entertaining, so you haven't much time to meet with anybody.

Q. You wouldn't say that you didn't see wholesalers in other groups outside of this conduit committee?

A. No, sir.

Q. You didn't intend your answer to Mr. Austin's question to indicate that you didn't see groups of wholesalers at Buffalo at that time?

A. Mr. MacIntyre, I had a bar in my suite, and I saw groups almost every hour of the day.

(Discussion had off the record.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. The last question Mr. Stewart asked you on cross-examination was as to your purpose—I mean Mr.
1637 Robison asked you on cross-examination, was as to your purpose in using this so-called equalization clause on your Government bid forms, attaching them to the forms and making them a part of your bid, and you said you did it to make yourself competitive with the others.

A. That's right.

Q. What did you mean by the word "competitive" as you used it there?

A. I mean in the allowance of the bid the Government agency figures back these land grant refunds in determining what is their net cost. And the company so located in a section of the country that could show greater land grant refunds than we could show, would have that much ad-

vantage in the delivered price to the Government. And we put in the equalization clause so that we save—I will put the clause into your record, if you want it. I have it in my pocket. It merely means that no matter what any manufacturer quotes, where he would—not what he quotes, but from where he quotes, well, we will equalize the freight charges with that man.

Q. It means, therefore, you would match whatever he did?

A. That's right; as to freight rates only. Not as to price.

Trial Examiner Norwood: Well, does the Government accept that sort of a bid?

1638 The Witness: Oh, yes; yes, sir.

By Mr. MacIntyre:

Q. And it means that you not only match the freight rates, but the combination of the freight rates applying on Government bills of lading, and the basing point price plus that?

A. No, sir. No, sir. We only match the freight.

Q. I will have to see the paper that you have got in your pocket on that.

A. (Witness hands paper to counsel.)

Mr. MacIntyre: I ask this be marked, for identification, as a Commission Exhibit.

Trial Examiner Norwood: Let the witness tell us what that is.

Mr. MacIntyre: Yes, he can.

The Witness: That is the equalization clause we put on our bids to the Government.

Trial Examiner Norwood: Yes, mark it.

(The document above referred to was marked, for identification, "Commission's Exhibit 704.")

By Mr. MacIntyre:

Q. Now, Major Quinn, I am showing you Commission's Exhibit, for identification, 704, that is the equalization clause that you have been talking about here this afternoon, is it?

1639 A. That's right.

Q. Which you have attached to your bids?

A. That is correct.

Q. You know that your competitors were attaching a

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clause carrying such wording in bids they submitted to the Government at the time you used it?

A. I haven't the slightest idea of what our competitors did.

Q. Is it your testimony that you never saw any use of a similar clause by your competitors in their bids?

A. No, sir, I have never seen anybody else's bid.

Q. Where did you get the wording of it?

A. I presume it was prepared by our attorney. We knew of the existence of the equalization of land grants, and I presume that our attorney got it.

Q. From what source?

A. What?

Q. From what source?

A. From the field, our agents would tell us.

Q. That your competitors were using it?

A. Yes; that they were using some form of equalization. The exact form they used, I haven't the slightest idea.

Q. Well, do you know of any instance where your equalization clause, as is shown by Commission's Exhibit, for identification, 704, was ever used by you in any Gov-
1640 ernment bid—

A. Yes, we—

Q. —which caused your bid to be any different on a delivered cost basis to the Government, from the bid of your competitor?

A. I haven't the slightest idea of what the bids of my competitors were. You would have to get that from your Government files. They have all the bids.

Mr. MacIntyre: I offer Commission's Exhibit 704 in evidence, if your Honor please.

Trial Examiner Norwood: Any objection?

Mr. Stewart: No.

Trial Examiner Norwood: Received as marked.

COMMISSION'S EXHIBIT NO. 704, was offered and received in evidence.

By Mr. MacIntyre:

Q. Can you cite to us, Major Quinn, any instance where you have quoted to the Government, as you have said, FOB mill, without the use of an equalization clause such as that as is shown by Commission's Exhibit 704?

A. I can't give you the schedule numbers in detail. But

practically every bid to the Navy requires you to quote FOB factory and FOB destination, practically every Navy bid. The numbers of the schedules, I can't give you.
1641 Even within the last three months, we have had those bids.

Q. And in bidding your so-called FOB mill factory price, you use the Pittsburgh base?

A. I use the FOB mill price, our own mill price.

Q. That has been the Pittsburgh base price, hasn't it?

A. We happen to be in the Pittsburgh District, so it would be the same as the Pittsburgh base price. But it is our FOB mill price.

Trial Examiner Norwood: Was it adjusted in any way through freight applications?

The Witness: No. Just FOB mill. And we happen, of course, to be in this district, so it is the same as the published card. But it is our mill price.

By Mr. MacIntyre:

Q. Now, you told Mr. Stewart on cross-examination that you didn't know that the manufacturers of rigid steel conduit—I mean that the Rigid Steel Conduit Association adopted this consignment stock agreement form, but that the individual members of that Association did adopt it. Do you recall that?

A. That is correct.

Mr. Stewart: Excuse me. That isn't what he said, Mr. MacIntyre, and you don't intend that. What he said was if he used the word "Association" he used it inadvisedly.

Mr. MacIntyre: I think we have the substance of
1642 it included in the question.

Trial Examiner Norwood: Read the question.

(Last question and answer read.)

Mr. Stewart: You mean you recall it—or what is correct?

Trial Examiner Norwood: Explain it.

The Witness: You mean in the cross-examination?

Trial Examiner Norwood: Yes.

The Witness: Mr. Stewart asked me a question of whether I meant that the Association adopted this agreement, and I told him if I used the word "Association" as such, I did so inadvisedly; that the individual members did in many cases adopt it, but that some never adopted it. That was, I believe, my answer.

Mr. Stewart: That's right.

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By Mr. MacIntyre:

Q. You don't intend the testimony you are giving in that respect to modify anything you have said concerning discussions that the members of the Association had at its meetings concerning this consignment stock form?

A. If I testified concerning anything about discussion at the meeting on this form, then I don't intend to modify it.

Mr. MacIntyre: That is all.

1643 *Recross Examination by Mr. Stewart.*

Q. Mr. Quinn, I would like to call your attention to the minutes of January 27, 1937, and ask you if that correctly states the situation with regard to the matter of the jobbers about which you have testified on direct examination? Will you look at the minutes beginning at the bottom of page D?

A. This purports to be my own report of the meeting, so it must be reasonably correct, if I made the report.

Q. I am asking you whether those minutes correctly state the facts with regard to that matter?

A. I would say yes.

Q. And state whether or not the matter following the recommendation was a matter for the Association or for the individual manufacturers?

Mr. MacIntyre: I object to that question.

Mr. Stewart: All right, I will withdraw that question.

By Mr. Stewart:

Q. Will you look at Mr. Bennett's letter or statement, which is at the end of the minutes, and I ask you if that refreshes your recollection as to whether or not the matter of following that recommendation or whatever action was taken was left to the individual manufacturers?

Mr. MacIntyre: I object to that question on the
1644 ground that the witness, in response to Mr. Stewart's previous question on recross stated that this shows what was done. And we shouldn't draw, or have the witness draw a conclusion for us from that; that the Commission and the Courts do that.

Trial Examiner Norwood: Read the question.

(Last question read.)

Trial Examiner Norwood: Objection overruled. Answer the question.

A. I would answer yes that it does.

By Mr. Stewart:

Q. To what extent?

A. Well, this distinctly says—

Q. Does it refresh your recollection?

A. Yes.

Trial Examiner Norwood: What do you remember about this?

By Mr. Stewart:

Q. State whether or not the matter of acting was left to the individual manufacturers, in the light of your refreshing your recollection from Mr. Bennett's letter.

Mr. MacIntyre: Again I object to it on the ground it does not call for evidentiary fact; it calls for a conclusion as to whether or not certain action that was taken amounted to something else.

1645 Mr. Stewart: Not at all. I am asking, after he looks at Mr. Bennett's written statement, as to whether or not the matter of acting or not acting on the matter of the jobbers' additional compensation was left to the individual manufacturers.

Trial Examiner Norwood: Was there any resolution that all were to follow this, or any understanding?

The Witness: No understanding.

Trial Examiner Norwood: Any agreement?

The Witness: No agreement.

Trial Examiner Norwood: I think that covers it.

Mr. Stewart: That is it.

Trial Examiner Norwood: Any further questions?

Mr. MacIntyre: I will have to ask a further question on the basis of that, if your Honor please.

Redirect Examination by Mr. MacIntyre.

Q. Now, as to this term "agreement" which you have used in your last answer. Do you consider that a group of rigid steel conduit manufacturers, including yourself, meeting together as members of the Rigid Steel Conduit Association, and discussing the advisability of their adopting and using a uniform consignment stock form contract,

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contract form, and then each of them going out shortly thereafter, or at least, a majority of them who so
1646 participated in that direction, going out shortly thereafter and adopting such form as they had discussed, a uniform contract, amounts to an agreement.

A. That is a long hypothetical question, Mr. MacIntyre. You are asking me whether if we all met and discussed it—

Q. No—

A. I can't answer your question. It is too much in detail for me.

Trial Examiner Norwood: Suppose without any formal agreement you went out and thereafter all adopted it. If that were the case, would you consider that an agreement?

The Witness: Not necessarily. Not necessarily.

You understand that we engaged Mr. Blake as an attorney. At that time we were all very much interested in the Robinson-Patman Law, because it was a brand new type of law and thought it would amount to something, and we were trying to find out what in the world we could do and still do business, with the Robinson-Patman Law on the statute books, and any discussion we had with regard to consigned stock agreements and such, was so we could operate as an individual company under the Robinson-Patman Law by adopting some form of agreement.

Mr. MacIntyre: Now, if your Honor please, I will ask the question I put to the witness be read, that I get an answer to it.

1647 Mr. Stewart: Then I am going to object to the form of the question, first, as assuming a state of facts that does not exist, and, second, asking—

Mr. MacIntyre: No.

Mr. Stewart: Oh, yes, it does not exist. There is nothing in the record.

In Mr. MacIntyre's question there are facts assumed which are not in existence in this record.

Trial Examiner Norwood: Well, then, we will assume hypothetical facts there to determine what this witness said when he said there was no agreement. What he meant by the term "agreement." That is the only thing this alludes to.

The Witness: I think I answered your question and said I would not.

Trial Examiner Norwood: Read the question over to

him and if you have anything to add to your previous answer, you may do so.

(Last question read.)

Mr. Stewart: Now, I should like to ask the Examiner to insist—

Trial Examiner Norwood: This is confusing. If you let him answer first, we will discuss it—

Mr. Stewart: Certainly it is confusing. An agreement on whose part? A majority of who?

1648 The Witness: I answered I did not consider it an agreement. I said it was a long hypothetical question that was difficult to analyze, but if the way I understand the question—my answer would be I would not consider it an agreement.

Mr. MacIntyre: That's all.

Mr. Stewart: That's all.

Trial Examiner Norwood: Anything further?

(No response.)

Trial Examiner Norwood: You are excused.

(Witness excused.)

Trial Examiner Norwood: I want the record to show here for the benefit of the checkers that there is no Commission's Exhibit 77-C as marked, for identification. This series should be 77-A, 77-B, 77-D; 77-C being skipped. So, in checking it, you will have that information.

(Exhibit 77-C cancelled.)

Mr. Robison: Before we adjourn, Mr. Examiner, may I make an entry on the record of the presentation of the forms of agreement that were requested yesterday of us?

Trial Examiner Norwood: Yes.

Mr. Robison: In compliance with the request made of us by Mr. MacIntyre at pages 1384 and 1385 of the record yesterday, I hand to Mr. MacIntyre a copy of the form of consigned stock agreement, being the form of the

1649 Youngstown Steel Products Company, a subsidiary of the Youngstown Sheet & Tube Company, a Respondent in the case, as the form of stock agreement that was in use by the Products Company in the years 1937 and 1938 and prior thereto, back, at least, to 1933, and used down to the present time without change.

Mr. MacIntyre: I ask that this be marked as Commission's Exhibit, for identification, 705.

(The document above referred to was marked, for identification, "Commission's Exhibit 705.")

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Mr. Robison: In further compliance with Mr. MacIntyre's request, I hand Mr. MacIntyre a form of specific building job purchase contract of the same subsidiary, the Youngstown Steel Products Company, as the form of such contract in use by that company since November, 1934, and used down to the present time without change.

Mr. MacIntyre: I ask that that be marked as Commission's Exhibit, for identification, 706.

(The document above referred to was marked, for identification, "Commission's Exhibit 706.")

Trial Examiner Norwood: What is your further pleasure, gentlemen?

Mr. MacIntyre: Well, if your Honor please, I would like to state this for the record at this time: that no further witnesses are expected to be called by me for hearing
1650 in Pittsburgh in this case. Therefore, I would ask that we adjourn to the hearing in Chicago, for which I do have witnesses subpoenaed for appearance Friday of this week at 10 o'clock, and in this connection I would also like to state for the benefit of counsel for Respondents that after hearing in Chicago for Friday and Saturday, I believe that we can consider the hearings in this case, so far as presentation of evidence by me, completed, except for some three or four days in Washington, D. C., and that I would hope to and I still plan to rest the case in Washington after approximately four days' hearings, upon the completion of the hearings in Chicago Saturday night of this week.

I had hoped that those four days of hearings in Washington could be held next week, but several circumstances are now arising so as to make it appear almost impossible to complete the hearings of four days in Washington next week, so I would ask that we consider hearings there beginning November 3rd, Monday, November 3rd, after the finish of the hearings in Chicago Saturday evening, October 25th.

Mr. Gilpatric: On that subject, Mr. Examiner, the 4th of November, Tuesday, is Election Day, and I, for one, would like to be present in New York on Election Day, and I think it would be better if the hearings recon-
1651 vened on the 5th.

Trial Examiner Norwood: We will discuss that between now and the time we adjourn in Chicago. We will appoint a day then for further hearing.

Mr. Welch: Can we have an understanding about next week, however, that we will not go on next week?

Trial Examiner Norwood: I think it is the understanding we are not to hold any hearings next week, but we might compromise on that in some way; I don't know.

Mr. MacIntyre: My principal purpose in making the statement that I have, for the record, is to suggest to counsel for the Respondents that as to the hearings in Chicago and as to the hearings in Washington, which I have made reference to, with respect to those hearings at those two places, they should be prepared to meet any and all evidence that I am going to offer before I rest the case, except invoices or copies of invoices from the files of the Respondent companies. In other words, I wouldn't want to run into a portion of our evidence there in Washington, or in Chicago, and have it suggested by Respondent's counsel they were taken by surprise and ask for some two or three days or even a week or two or three weeks adjournment between the day the evidence was offered and the day on which they would expect for me to rest the case.

Mr. Austin: I frankly admit I don't understand 1652 that at all.

Trial Examiner Norwood: I think we may discuss that later on. We may be borrowing trouble.

Mr. MacIntyre, do you have noted there the room we are to reconvene in in Chicago?

Mr. MacIntyre: Subpoenas have been issued to witnesses to appear at Federal Trade Commission Room 1118, New Post Office Building, Chicago, Illinois.

The hearing will probably be held in an adjoining room, but notice will be posted, or information can be secured in Room 1118 as to in which room the hearing will be held.

Trial Examiner Norwood: I will say that that is the Administrative Office of the Federal Trade Commission, and the hearing room is just around the corner. You couldn't miss it. It is almost an adjoining room, around the corner from the others, so notice will therefore be made in the hearing room or in another room.

Mr. King: Chicago is still on Daylight Time, and I think these gentlemen would like to make it Central Standard.

Trial Examiner Norwood: Make it Eastern Standard.

Mr. Austin: Daylight Saving for Chicago is Eastern Standard.

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Mr. Bozeman: Mr. Examiner, I misunderstood Mr.
1653 MacIntyre a moment ago in that long complicated statement he made regarding the close of his case. I don't know that by the statement he intended to imply he would oppose any application we may make at the close of his case for some reasonable period of time in which to prepare to put in our case, and I want to say here and now on behalf of the General Electric Company we certainly will expect to have whatever time is necessary to examine these documents and get ready to go on on our own behalf.

Trial Examiner Norwood: I think we are borrowing trouble. We will discuss that.

Mr. Bozeman: I just want to register warning about it; that's all.

Trial Examiner Norwood: Counsel will not have any cause to complain about that.

The hearing is now adjourned at 4:20 P. M., to reconvene in Chicago, Illinois, in the New Post Office, Federal Building, in Room 1118, office of the Federal Trade Commission, or such other room as will be designated by notice there placed, at 10 o'clock A. M., Eastern Standard Time on the 24th day of October, A. D. 1941.

(Thereupon, at 4:20 o'clock P. M., the hearing was adjourned, to reconvene in Chicago, Illinois, October 24, 1941, at 10 o'clock A. M., Eastern Standard Time.)

1656 PROCEEDINGS.

Trial Examiner Norwood: Come to order.

Pursuant to adjournment in Pittsburgh on October 22nd, the hearing in Docket 4452 is now reconvened in Room 1123, Office of the Federal Trade Commission, in the Post Office Building, Chicago, Illinois, at ten o'clock a.m., Eastern Standard Time.

1657 ARNOLD H. FRIEND was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Friend, what is your business and occupation?

A. I am in the electrical business, the sales manager for The M. B. Austin Company, Chicago.

Q. How long have you been in that position?
A. Well, as sales manager, about thirty years.
Q. Does The M. B. Austin Company handle rigid steel conduit?
A. Yes, we handle it.
Q. In what way?
A. We have it manufactured for us under our own trade name.
Q. Who manufactures it?
A. Triangle Conduit & Cable Company.
Q. Where is it manufactured?
A. At Moundsville, West Virginia.
Q. What do you do with it after you have it manufactured for you?
A. We market it through wholesalers throughout the country.

Q. As sales by The M. B. Austin Company or as
1658 sales by the Triangle Company?

A. The sales are by The M. B. Austin Company.
Q. On its own account?
A. On its own account. We carry the accounts.
Q. Who are the other officers of The M. B. Austin Company?
A. Mr. Austin, Sr., passed away last January. Mr. M. B. Austin, Jr., is the president; W. W. Kingsbury is the treasurer—is the vice president; I am the treasurer and sales manager; Mr. L. J. Peckham is the secretary.
Q. You spoke about Mr. M. B. Austin. Was he president of the company?
A. He was the president, yes, up to shortly before his death.
Q. When did that occur?
A. January 24, 1941.
Q. How long had he served as president of the company up to that time?
A. Well, from the time that we incorporated it up to 1940, the early part of 1940, and he had then been ill and Mr. Austin, Jr., was elected president.
Q. What was the date of incorporation?
A. Well, I really couldn't tell you just how far ago, just how many years ago.
Q. Well, approximately?

A. Well, I would say that we were incorporated
1659 possibly thirty-five years ago.

Q. So he was president of the corporation for ap-

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proximately thirty-five years or thirty-two or thirty-three years—

A. Somewheres in that neighborhood, yes.

Q. —up until 1940; and as president, did he have active management of the company?

A. He was very active in the management.

Q. Now, you have told us about securing rigid steel conduits from Triangle Conduit & Cable Company. That is Inc., I believe is the full name of the company, isn't it?

A. I don't get that.

Q. Triangle Conduit & Cable Company—

A. Yes, I know that.

Q. —inc., that is the full name of the company?

A. Yes.

Q. Pursuant to what arrangement do you make purchases of conduit from that company for resale on your own account to jobbers?

A. We have a contract with them to manufacture conduit which we have approved and labeled by the Underwriters under our own brand.

Q. And that is at a less price than you charge your jobbers, is that correct?

A. Well, we charge our jobbers—of course, we receive a compensation fee on that, beyond what we charge
1660 our jobbers.

Q. That is, your sales prices are higher than the prices that you pay to Triangle, is that correct?

A. We sell at higher prices.

Q. Than you pay Triangle for the same conduit?

A. Yes, sir.

Q. And you have always done that, is that correct?

A. Yes, sir.

Q. Over what territory do you sell rigid conduit, Mr. Friend?

A. I think in all parts of the United States and some foreign business.

Q. And you make shipments to all of those locations from what point?

A. Mostly from the factory at Moundsville.

Q. That is shipped direct from Moundsville?

A. Shipped direct from our factory, yes.

Q. Do you carry some stocks?

A. We have carried a very small stock here.

Q. Anywhere else?

A. What?

Q. At any other points do you carry stocks?

A. Well, we carried a stock in Los Angeles just for a short time, because at the present time there is no stock available. We have a little stock in Seattle.

1661 Q. When did you discontinue your stock in Los Angeles?

A. When did we what?

Q. When did you discontinue your stock in Los Angeles?

A. Well, we merely discontinued it because we haven't anything to ship. There may be some odds and ends there, now, but we haven't anything to put into our stock. With the demand that exists we have discontinued it. It is temporarily discontinued only.

Q. You have had stocks in some cities which you have discontinued in past years, have you?

A. Well, not our own warehouse stocks.

Q. Well, whose stocks were they that you did discontinue?

A. They were stocks that were in the warehouses of wholesalers in different parts of the country.

Q. Consigned by you, sent to them by you on consignment?

A. In some instances.

Q. Why did you discontinue those stocks in such instances?

A. Because there is no material available at the present time.

Q. Well, isn't it a fact, Mr. Friend, that you discontinued some stocks as early as three years ago in a number of cities?

A. Possibly because of lack of turn-over.

Q. You had the material then.

A. What?

1662 Q. You had the material at that time.

A. Yes, but where there is no turn-over there is no sense in keeping an inactive stock, in other words,—

Q. Well, when the turn-over came on after that and before the supplies became scarce, you did not replace those stocks, did you?

A. When the turn-over ceased?

Q. Now, when the turn-over began to pick up and before the scarcity of materials you did not replace the consignment stocks in those instances where you had discontinued them, did you?

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A. I don't quite understand. Wherever there was turn-over, as long as there was material available, we replenished those stocks, yes.

Q. Do you recall, Mr. Friend, discussions about stocks in Chicago warehouses between you and your competitors?

A. Not between us and our competitors, no.

Q. Is it your testimony that you recall nothing about any discussions between you and your competitors about the maintenance of warehouse stocks in Chicago?

A. No, the only thing I know is that at one time, mostly for reasons of room, we discontinued carrying a large stock in Chicago, and for a long time we had practically nothing here.

Q. When did you discontinue them in Chicago?

1663 A. I really couldn't tell you what year it was. It was quite some—

Q. Well, approximately? 1937?

A. Oh, no, it was long before that. I would say it was back in the twenties, the late twenties.

Q. You didn't have any stock in Chicago during the years 1936 and 1937, did you?

A. I can't answer that, whether we did or not.

Q. Isn't it a fact that you didn't have any then but added some stocks in 1938 after the month of July?

A. We added some stock because we withdrew some consigned stocks by reason of turn-over and had them brought into our warehouse here for disposition.

Q. Up to that time you had no actual warehouse stocks here, is that correct?

A. That is right.

Q. Mr. Friend, we have in evidence here the price cards of The M. B. Austin Company, documents marked as Commission's Exhibit No. 58. What, if anything, have you had to do with the preparation and publication and distribution of those cards to the trade?

A. We had nothing to do with the preparation of them other than have them printed.

Q. Who prepared them?

A. We followed the price sheets of—what years

1664 are you talking about now?

Q. These would be the years from 1933 until January, 1941.

A. Well, as early as 1933 the cards were furnished to us by our former principals in the conduit industry whom

we represented as selling agents, the Garland Manufacturing Company. After that, we made arrangements with Triangle, and they didn't furnish us the cards, but we had them printed, and in some instances, in certain instances we had them printed just by substituting the name.

Q. Do I correctly understand you, then, when you say that you merely took since 1933 the price cards of the Triangle Conduit & Cable Company, Inc., and put your name on them and distributed them?

A. In some instances, yes, as a matter of expediency and economy.

Q. That is, they prepared the cards for you?

A. They prepared the cards.

Q. And in many instances actually had them printed for you, is that correct?

A. In some instances, yes. Sometimes when time was short and they had the form set up their own printer would print them for us and bill us for them.

Q. Merely inserting your name on them instead of theirs?

A. That is right.

1665 Q. You are acquainted with the provision that is carried on those cards for figuring delivered price quotations, are you, Mr. Friend?

A. They are delivered at destination?

Q. Yes, as to the method to be used in figuring delivered price quotations.

A. Oh, yes.

Q. You have not only seen the cards of the Triangle Company, but cards of other of your competitors, that carried exactly the same provision for figuring delivered price quotations, have you?

A. I couldn't say whether they carried the same provisions as we do. We never pay any attention to anybody's price cards except Triangle.

Q. Is it your testimony that you have never seen the price cards of your competitors?

A. Oh, I have seen them, but I have not checked the exact figures on the prices, checked each size and quantity of conduit delivered to destination. I have never checked that.

Q. You are acquainted with the fact that they do carry a provision for figuring delivered prices which is no different from the figures your cards carry?

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A. I should think possibly they used the same system on figuring delivered prices.

1666 Q. You know that to be a fact, don't you, Mr. Friend?

A. No, I do not.

Q. Is it your testimony that you don't know that your competitors put out price cards which provided for figuring delivered price quotations on the basis of Chicago and Pittsburgh base point prices plus freight from those points to destination?

A. That is not my testimony. I said that I knew they put out price cards, but I have never checked to see whether they were identical or the same as ours.

Q. Well, you know that they carry such a provision as the one I just outlined to you, don't you?

A. Possibly similar provisions.

Q. Well, you know that they do have such provisions for figuring prices?

A. I don't know. All I know is about our own prices.

1667 Q. Is it your testimony then that you don't know that the price cards of your competitors carry a provision in them for figuring delivered price quotations by taking the base point prices at Pittsburgh or Chicago and adding to them, to those base point prices, freight to destination?

A. No doubt they do.

Q. Don't you know that they do?

A. I don't know positively anything about our competitors.

Q. Is it your testimony that you don't know that the price cards of your competitors carry a provision for figuring prices through that method?

A. I don't know.

Mr. Gilpatric: I object to the question. This is the fourth time it has been asked now.

Trial Examiner Norwood: I am going to ask the witness to answer that question directly. I shall overrule the objection and ask that he answer it directly, and I will have it read to him.

(The question above referred to was read by the reporter.)

The Witness: Not by positive knowledge, no.

By Mr. MacIntyre:

Q. What do you mean by "not by positive knowledge"?

A. I know they all have systems of delivered prices and destination prices, and just what their prices
1668 are, I don't know. We have never been interested in it except in a general way.

Q. You know that they provide in their price cards for the use of a system of Pittsburgh and Chicago bases plus freight to destination?

A. Yes, I know, yes, sir.

Q. And you have known that all the while when you were issuing your price cards?

A. Yes, sir.

Q. Have you ever seen any price cards of your company—of the Triangle Company or of any other of your competitors which provided for f.o.b. mill quotations?

A. I have not.

Q. Now, under this system to which we have made reference, isn't it a fact, Mr. Friend, that when sales are made in accordance with the price cards at delivered price quotations figured in accordance with those cards, that you secure greater amounts from your customers near the point of production of the Rigid Steel Conduit you sell than from customers who are located at greater distances than they are, than the others?

A. That depends entirely on the freight rate.

Q. Don't you know that the freight rate—

Trial Examiner Norwood: Well, is the freight rate such as to produce that effect in the majority of cases?

The Witness: Well, the freight rate is based on
1669 the actual freight rate from point of destination, and if we sell conduit in Casper, Wyoming, for instance, it would naturally cost more money than it would twenty or twenty-five or thirty or fifty miles away from the Pittsburgh factory, because the freight rate is greater. As a matter of convenience, this freight that we have used, we can secure the same thing from any traffic bureau, like the Climax people, ask them for a freight rate, then that rate would be the same thing.

By Mr. MacIntyre:

Q. You have customers at Pittsburgh, Pennsylvania, have you?

A. Yes.

Q. And you have customers in Chicago?

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A. Yes.
Q. And you have customers in St. Louis?
A. Yes, sir.
Q. Isn't it a fact that when you make sales to customers in those three cities in accordance with the prices and the methods outlined in the price cards, that you secure greater amounts from your customers in Pittsburgh and in Chicago than you do from customers in St. Louis?
A. You mean we get more money from them?
Q. Yes.
A. No, we do not. We get less money from a customer in Pittsburgh, because there is no freight involved.
1670 That is an f.o.b. basing point.
Q. Where are the goods shipped from to the customers in Pittsburgh?
A. Where are they shipped from?
Q. Yes.
A. Moundsville, West Virginia.
Q. And it is your testimony that you get less money from your customer in Pittsburgh than you do from your customer in St. Louis?
A. Yes, sir.
Q. Why is that?
A. Because there is the freight involved to St. Louis. We can't pay the freight.
Q. Freight involved from what point?
A. From the basing point, freight from Pittsburgh.
Q. How does that operate then to give a less amount from your customer in Pittsburgh than the customer in St. Louis?
A. Pittsburgh is what is known as the Pittsburgh area, and so far as I know in all the years I have been in business around here I know Pittsburgh has always been used in the steel industry as a base point—
Q. Now, isn't it a fact—
A. —whether the mill is located within the city limits of Pittsburgh or just outside.
Q. Isn't it a fact that you get more from your
1671 customer in Pittsburgh for a like quality and quantity of rigid steel conduit than you do from your customer in St. Louis?
A. No, it is not.
Q. Why isn't it?
A. Because St. Louis has the added freight.

Trial Examiner Norwood: Added freight from Pittsburgh to St. Louis?

The Witness: We add the freight from Pittsburgh to St. Louis in greater or less than carload, as the case may be.

Trial Examiner Norwood: When you ship from your plant in Pittsburgh you have to absorb that freight, do you not?

The Witness: We have to absorb it when we ship from Pittsburgh?

Trial Examiner Norwood: Yes.

The Witness: We would absorb the freight from the suburb of Moundsville, which is practically a suburb of Pittsburgh, yes, the cartage.

Trial Examiner Norwood: Yes.

By Mr. MacIntyre:

Q. In your shipment of conduit to customers in Chicago, when you make sales in accordance with the price quotations set forth on your cards, isn't it a fact that you receive more from those customers than you do from 1672 customers located at Toledo, Ohio?

A. Well, Chicago is—Toledo, Ohio, would probably be on what is known as the Pittsburgh point, as shown in our price cards. Chicago would be the Chicago point. There is a differential in price which reflects the difference in freight between Pittsburgh and Chicago, and when we sell f.o.b. Chicago it is sold at the card price with no freight added. If we were to ship material to Toledo we would not ship it from Chicago.

Q. Where would that be shipped from?

A. Moundsville.

Q. Where would you ship that material from to customers located in Indianapolis?

A. Moundsville.

Q. And to customers located in Peoria, Illinois?

A. I believe Peoria is a Chicago point.

Q. Where would the goods be shipped from to customers in Peoria?

A. What?

Q. From what point would goods be shipped to customers located in Peoria?

A. From the factory at Moundsville, or if we had the material available we would ship it from here.

Q. In the shipment of goods to your customer in

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Peoria from the factory in Moundsville, West
1673 Virginia, when you make the sale in accordance with the cards, you would secure a less amount on shipments to that customer than you do on shipments to your customers in Pittsburgh, is that correct?

A. No, we would get more, because there is the freight added.

Q. That is in the Chicago territory, and you start absorbing freight from the Chicago base deductions, don't you?

A. Yes, but the Chicago base prices are higher than the Pittsburgh base prices.

Q. By the amount of the difference in the freight?

A. What?

Q. By the amount of the difference in the freight?

A. Practically so. I have never stopped to figure that.

Q. You have customers in Milwaukee, have you?

A. Yes.

Q. From what points do you make shipments to your customer in Milwaukee?

A. In the majority of cases from the factory at Moundsville.

Q. And as to the amounts that you receive in at your factory at Moundsville for like grade and quality of conduit shipped to customers in Milwaukee, isn't that less than you charge your customers in Pittsburgh?

A. I couldn't answer that.

Q. Why not?

1674 A. Without figuring it. I don't think so.

Q. Milwaukee is on a Chicago base, isn't it?

A. Milwaukee would be on a Chicago base, yes. Then we would get more, because we would get the Chicago base price plus the freight, carload or less than carload, as it may be.

Q. But in that case you would have to absorb the freight from Pittsburgh, to Milwaukee, wouldn't you?

A. We don't absorb it. We add it.

Q. From Pittsburgh to Milwaukee?

A. Certainly. We add it.

Q. Despite the fact it is a Chicago base?

A. We use the Chicago base price and add the Milwaukee freight.

Q. From Chicago?

A. No, from Pittsburgh.

Q. Is it your testimony that in selling a customer of

yours in Milwaukee that you use the Chicago base and add the freight from Pittsburgh to Milwaukee in determining what that customer shall pay for his goods? Is that your testimony?

A. Would you mind repeating that?

Mr. MacIntyre: Will you read the question.

Trial Examiner Norwood: Read it.

(The question referred to was thereupon read by the reporter.)

The Witness: Well, we would add the regular
1675 freight added for carload or less than carload that the customer would be entitled to.

Trial Examiner Norwood: Would that regular freight added be from Pittsburgh or from Chicago to Milwaukee?

The Witness: Well, I really don't know.

By Mr. MacIntyre:

Q. Who computes such matters for you, Mr. Friend?

A. I don't know.

Mr. MacIntyre: Please read that.

(The question above referred to was read by the reporter.)

The Witness: Oh, there are several clerks in our office.

By Mr. MacIntyre:

Q. Isn't it a fact that the Triangle Conduit and Cable Company computes it for you?

A. They don't compute the delivered prices for us, no. The freight is added to the prices from adders and we sell it at the same price as Triangle Conduit and Cable Company.

Q. In other words, your sales are made at the same prices as Triangle sells theirs?

A. We are just their agents, yes, sir.

Q. Is it your testimony then that this conduit that you sell is Triangle's conduit?

A. All the conduit we sell is Triangle conduit.

1676 Q. And they own it?

A. No, as they sell it to us we own it.

Q. And yet you consider yourselves their agents?

A. Yes, that is non-exclusive jobber agents.

Q. But when you buy the conduit from them you have the privilege of selling it at any price you want to?

A. We would have, except that our contract provides

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that we are to sell at the same prices that they sell. In other words—

Q. Oh, you have a contract with them?

Mr. Stewart: Let him finish the answer.

Trial Examiner Norwood: Go ahead.

Mr. Stewart: In other words—

The Witness: We are their agents, but we carry our own accounts and take all the risk, and we receive a compensation for it. They have other agents where they carry the account, whether they pay them on a commission or salary, I don't know.

By Mr. MacIntyre:

Q. But they don't pay you a commission or salary?

A. What?

Q. They don't pay you a commission or salary?

A. They pay us a commission or compensation beyond their prices.

Q. That is their prices to you?

1677 A. What?

Q. Beyond their prices to you?

A. No, beyond their prices to the trade.

Q. When you buy this conduit from Triangle Conduit and Cable Company, that is bought outright by you?

A. It is all bought outright now.

Q. Mr. Friend, I am showing you Commission's Exhibits 51—

A. Pardon me until I change my glasses so that I can read them.

Q. —and 52. Do you know of any arrangement pursuant to which you purchased rigid steel—or your company has purchased rigid steel conduit from the Triangle Company other than as provided for in those two contracts?

1678 Mr. Stewart: Excuse me. May I ask what those dates are?

The Witness: Yes.

Mr. Stewart: Just a minute. What are the dates on those contracts?

Trial Examiner Norwood: Read the dates.

The Witness: The dates of those contracts?

Mr. MacIntyre: One of them is 1935 and one is 1939.

The Witness: This date here must be upon the contract. You haven't got this contract dated, Mr. MacIntyre.

Mr. MacIntyre: I didn't hear what you said.

The Witness: I say, I think it was made in 1935. Oh, yes, January, 1935. Well, at that time—

By Mr. MacIntyre:

Q. Now, just a moment. Showing you that contract, which is Commission's Exhibit No. 51—

A. Yes.

Q. Here is Commission's Exhibit No. 52, a contract dated November, 1939.

A. Yes.

Q. Now, do you know of any other arrangement than the one that is provided for under those two contracts pursuant to which you have purchased rigid steel con-
1679 duit from the Triangle Company?

A. Yes, in the last several years instead of their consigning to us, we buy all of our conduit outright and it is billed to us immediately when it leaves the factory. It becomes our property when it leaves the factory.

Q. And is that the general practice that you have followed in recent years?

A. Yes, sir, in the last—oh, probably the last three years, maybe four years.

Q. In the last four years you have handled it pursuant to that arrangement?

A. Yes.

Q. And not in accordance with this contract you just saw?

A. That is right. There is a modification of that contract.

Q. Now, you spoke a few minutes ago about not discussing warehouse stocks in Chicago with your competitors. Isn't it a fact that you have discussed that considerably with representatives of the Triangle Conduit & Cable Company?

A. I never did.

Q. Well, you know that other officials of your company did?

A. Possibly Mr. M. B. Austin, Sr., did.

Q. Well, you know that he did, don't you?

A. I don't know.

1680 Q. Now, you have told us about the price cards, that you secure them from the Triangle Company. Isn't it a fact that you also secure from the Triangle

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Company all freight rate books, delivery charge booklets, or freight adders?

A. Not in recent years.

Q. How recently have you failed to get any from them?

A. Well, I couldn't say, but when we first started our arrangement they sent us a few of the freight adder books and we used them, and then made our own connection for those rates.

Q. When did you secure freight adder books other than from Triangle Conduit & Cable Company?

A. The actual freights?

Q. No, the freight adder books.

A. Freight adder books, I think I still secure from the Triangle Conduit & Cable Company.

Q. You don't know of any other source from which you have secured any of those, do you?

A. I don't, no. We may, but I don't know it.

Q. Then as to the freight rate schedules, do you know of any other source than the Triangle Conduit & Cable Company from which you have secured those in recent years?

A. When we first made our arrangement with them, they furnished us the required number of sheets, and then we made a connection with a concern in Pittsburgh,
1681 a traffic bureau man, that runs a traffic bureau.

Q. Is that the man who runs the bureau by the name of Charles Donley?

A. That is the man.

Q. And you have continued to get them from him since then?

A. Yes.

Q. Prior to that you got them from the Triangle Company—

A. Yes.

Q. —entirely, is that correct?

1683-1684 By Mr. MacIntyre:

Q. Mr. Friend. I show you Commission's Exhibit 449, an original carbon copy of a letter which was furnished by you from your files, to an investigator of the Federal Trade Commission. It has been certified to, by your attorney, in this record, as a genuine and authentic letter from your files, and on the strength of that, it was admitted in evidence.

Now, will you tell me, as to that document,—

A. That bears my initials.

Q. The "A. H. F." are your initials?

A. "A. H. F.", by A. H. Friend.

Q. Well, does that mean that the letter itself was dictated by you?

A. Dictated by me.

Q. And I show you other carbon copies of letters which were furnished by you to an investigator of the Federal Trade Commission, after having been taken from your files, and which have been certified here as being genuine and authentic, by your attorney, with such initials, also. Are those letters which you dictated?

A. With the initials A. H. F.; not necessarily signed by me, but by my secretary.

Q. But dictated by you?

A. Yes.

1685 Q. I show you Commission's Exhibit No. 474, a carbon copy of a letter which was furnished by you to an investigator of the Federal Trade Commission, and which has been certified by your attorney as being genuine and authentic of what it purports to be on its face; and on the strength of that it has been admitted in evidence here.

I will ask you, as to that letter, and any other letters which were furnished—I mean which have been so identified—bearing the initials "M. B. A.," what can you say as to the person who dictated such letters?

A. Mr. M. B. Austin.

Q. Of your company?

A. Yes.

Q. Mr. Friend, you are acquainted with the fact that when you and your competitors use your price cards and their price cards with the same basing point prices shown on them, and use the same freight adders and freight rates from Pittsburgh or Chicago, as the case may be, to any particular destination, as of a given point of time, that you and they will arrive at matched delivered price quotations, is that correct?

Mr. Stewart: Just a moment. I object to the use of the term "matched". If he wants to ask if they arrived at the same delivered prices, that is all right.

Trial Examiner Norwood: Did they arrive at the

1686 same delivered prices?

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The Witness: It all depends. If the prices are the same as ours, and they use the same freight adders we do,—which I have no knowledge of—then, if the quotation is properly figured, they would arrive at the same prices.

Trial Examiner Norwood: If they followed the cards, they would have the same price to start with, wouldn't they?

The Witness: If they what?

Trial Examiner Norwood: If they followed the cards, they would have the same price to start with?

The Witness: I don't know if the other fellows followed the cards.

Trial Examiner Norwood: If the cards were the same?

The Witness: If the cards were the same, and if no mistake was made in the quotation, and if the freight adders were the same.

Trial Examiner Norwood: Yes.

By Mr. MacIntyre:

Q. The delivered price quotation would inevitably be the same, is that correct?

A. Yes, providing they followed the schedule, which is not very often the fact.

1687 Q. Now, do you know of any other method of figuring prices, by you and your competitors, which you and they have used in recent years—that is, within the last eight years—which would so inevitably give you and them the same delivered price quotations?

Mr. Robison: I object to that, Mr. Examiner, on the ground that it assumes inevitable similarity in price quotations, and the witness has not testified respecting any such identical quotations. He has said if certain things were done, if a certain mathematical procedure were followed, it would result in similar prices.

Trial Examiner Norwood: You object, then, to the word "so"? The word "so" in there is the objectionable point?

Mr. Robison: I think that is part of it, and I think the word "inevitable," also, because it assumes the existence of a state of facts which the witness has not stated except on a certain hypothesis.

Trial Examiner Norwood: I thought of that, but the witness has just used the word "inevitable." He said it was inevitable that they arrive at the same price.

Mr. Gilpatric: He didn't use it. That word was in the question.

Let's have the record read.

Trial Examiner Norwood: Didn't the witness use
1688 the word "inevitable"?

The Witness: No, I don't think I did.

Trial Examiner Norwood: I beg your pardon. I thought he had.

I will sustain the objection, and counsel may reframe his question.

Mr. MacIntyre: If the Examiner please, I submit the witness answered the question in which I used the word "inevitable," and thereby he adopted the word in his answer.

Trial Examiner Norwood: I think so, but I think counsel can reframe the question.

Mr. MacIntyre: That is all.

Mr. Stewart: No cross-examination.

Mr. Austin: No cross-examination.

Mr. Gilpatric: No cross-examination.

Trial Examiner Norwood: Mr. Friend, will you sign this, and fill it in.

The witness is excused.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. MacIntyre: I call as the next witness Mr. Eugene Carmichael.

Mr. King: If your Honor please, I would like to make, before this witness starts to testify, a motion.

1689 In view of your Honor's ruling on the objection to some of these questions, whereby you sustained them, I would like to renew my objection, as well as the objection of other counsel for Respondents, to like questions heretofore propounded in this case; and now move to strike similar types of questions and answers from the record.

Trial Examiner Norwood: When the counsel will cite me the lines and the pages, showing me where I have ruled one way on one question and another way on another, there will certainly be some striking forthcoming.

Mr. MacIntyre: Or, if your Honor please, there would be some revising of the rulings forthcoming,—

Trial Examiner Norwood: Yes.

Mr. MacIntyre: —even as to those that were disallowed; is that possibly correct?

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Trial Examiner Norwood: Yes. If there are some corrections necessary, it would not be the first time that it has happened in my experience. I always correct errors when I can.

Counsel should make that in the form of a motion sometime, and cite me the lines and pages, and I will be glad to consider it.

Mr. King: I was expecting to do so, and will do so.

Mr. MacIntyre: I think we had an understanding,
1690 the first day of the hearing in this case, that all counsel, both for the Commission and the Respondent, had exceptions without stating them to all adverse rulings.

Trial Examiner Norwood: That is true.

EUGENE CARMICHAEL, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination.

Trial Examiner Norwood: Give your full name.

The Witness: Eugene Carmichael, Jr.

Trial Examiner Norwood: How do you spell it?

The Witness: C-a-r-m-i-c-h-a-e-l.

By Mr. MacIntyre:

Q. Mr. Carmichael, what is your business and occupation?

A. I am an attorney-examiner for the Federal Trade Commission, and have been for the last seven and a half years.

My duties have been carried under such title, and are those of investigation in the regular work of the Commission.

Q. Have you, in connection with the carrying out of those duties, made an investigation into the rigid steel conduit industry?

A. Yes, I have.

Q. And did you in that connection call upon and
1691 propound questions to Mr. Arnold H. Friend of The M. B. Austin Company in Chicago?

A. I did.

Q. Will you tell us about when you interviewed him and propounded questions to him?

A. It was during the latter part of 1939 and early in 1940.

Q. Do you recall whether or not, during the course of that interview, you questioned him on the point as to what percentage, if any, of sales were made in accordance with the published price cards in the industry?

Mr. Stewart: The question is, did he ask him that?

Mr. MacIntyre: Yes.

The Witness: Yes, I did.

By Mr. MacIntyre:

Q. And what did he state in response to such questions?

Mr. King: I object to that, if your Honor please, because it is an attempt, as I understand it, to have this witness state his conversation with Mr. M. B. Austin, now deceased.

Mr. Stewart: No, it was as to Friend, as I understand it.

Mr. King: It is Austin, as I understand it. Is that correct?

1692 Read the question, please.

Trial Examiner Norwood: Read the question.

(Thereupon, the record referred to was read by the reporter.)

Mr. King: I am sorry.

Mr. MacIntyre: Now, read the last question again.

(Thereupon, the record referred to was read by the reporter.)

The Witness: I did so question him.

By Mr. MacIntyre:

Q. And what was his statement in response thereto?

Mr. Gilpatric: I object, your Honor, to that question. It is hearsay. When Mr. MacIntyre had Mr. Friend here on the stand, he could have asked him, which would have been the best evidence of what his answer was to that question.

Mr. MacIntyre: It so happens that Mr. Friend qualified himself this morning as a representative, during this period of time, and an agent, of the Respondent M. B. Austin Company; and I have a perfect right to introduce this evidence in this form, as an admission, and that is the manner in which I am offering it.

Mr. Stewart: I suggest, Mr. Examiner, that under the

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circumstances, since the witness, Mr. Friend, was on
1693 the stand, the only fair thing to do is to ask Mr. Friend; and if Mr. Friend gave testimony that was contrary to what he stated to the investigator, that we should not be put in the position of having to take the investigator's recollection of what Mr. Friend told him. We should have the direct testimony, one way or the other.

Mr. Gilpatric: Particularly since Mr. Friend has left.

Trial Examiner Norwood: Did you question Mr. Friend on this?

Mr. Stewart: Not at all.

Mr. MacIntyre: If you recall the testimony of Mr. Friend less than an hour ago, it was inconsistent with what we propose to show now by this witness.

Mr. Austin: How do we know that?

Mr. MacIntyre: You won't know until the answer comes out, and I am asking that question; and I can get from the witness an inconsistent statement made by Mr. Friend, as well as I can by the Respondent in this case.

Trial Examiner Norwood: I regard this as a situation, strictly speaking, where, if he is going to contradict a witness, he has to lay the ground very particularly for the contradiction, and give the witness an opportunity to explain it, and that is the only basis for that requirement, that he give the witness an opportunity to explain.

1694 Mr. Robison: That is right.

Trial Examiner Norwood: But the witness, however, is one of these Respondents, within easy reach; and I shall overrule the objection and permit him to answer.

Mr. MacIntyre: Read the question.

(Thereupon, the question referred to was read by the reporter.)

The Witness: He said that in any month, more than 87½ per cent of sales in the industry are on the basis of the card.

Mr. Stewart: Now. I move to strike out the answer, first, on the ground it is hearsay; and, secondly, it is simply repeating a conclusion which was stated by Mr. Friend, and therefore it is not binding; and, thirdly, the question asked by the investigator was too general and vague to be of any competency or materiality.

1695 Mr. Gilpatric: May I ask that in so far as Mr. MacIntyre considers this as an admission, that it be

considered as an admission of The M. B. Austin Company, and does not extend to the whole industry.

Mr. Robison: I would like to add the further ground that the information which the witness seeks to repeat is obviously hearsay, so we have a case of double hearsay.

Mr. MacIntyre: It is still my contention that this man has qualified himself as an agent of one of the respondents in Chicago, if we were to take his testimony as he stated it this morning, aside from the Triangle Conduit & Cable Company, Inc.

Trial Examiner Norwood: Read the question and answer.

(The record was read by the reporter.)

Mr. Gilpatric: Now, what month? What card?

Mr. Stewart: What year?

Trial Examiner Norwood: "Any" is all inclusive.

The motion is denied. Proceed.

By Mr. MacIntyre:

Q. Now, during the course of your investigations, did you call upon and propound questions to a Mr. Fred R. Eiseman, an officer of the Revere Electric Company, in Chicago, Illinois?

1696 A. I did.

Q. About when did you do that?

A. During the early part of 1940.

Q. Did you question Mr. Eiseman as to whether or not he was a member of the National Electrical Wholesalers Association?

A. Either I questioned him or he volunteered that information.

Q. And to what effect?

A. Well, he stated that he was a member, and had been for two years, of the Conduit Committee of that organization.

Q. Did he inform you whether he was a member of the Association?

A. He informed me that his company was a member of the Association.

Q. Did you question Mr. Eiseman concerning any activity of the National Electrical Wholesalers Association, concerning consignment stock agreement forms and provisions used in the industry?

A. Either I questioned him or he volunteered certain information in that regard.

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Q. What, if anything, did he tell you concerning the adoption of such forms by the rigid steel conduit manufacturers?

Mr. Stewart: May I submit, Mr. Examiner, this is the Commission's witness, and he should not be led. Let
1697 the question be, "What did he tell you?" and not "concerning the adoption." I submit the question is leading, and I object to it.

Mr. MacIntyre: I would be glad to strike the word "adoption."

Trial Examiner Norwood: I think that is not harmfully leading. He is confining him to a subject. They may have had conversation on many subjects. He may specify the subject.

Mr. King: I further object to the question on the ground there has been no proper foundation laid for this line of testimony.

Mr. Austin: May we have that question read?

Trial Examiner Norwood: Yes, read the question.

(The question above referred to was read by the reporter.)

Mr. Austin: Has the questioner laid any foundation for Mr. Eiseman testifying as to what the manufacturers did?

Mr. MacIntyre: If the Examiner please, that foundation was laid a long time ago. Mr. Eiseman is one of the respondents here. He is accused in the complaint as being in the conspiracy; and it is my contention the evidence shows that he is connected with this conspiracy, and if it does not, the evidence this man gives can only go
1698 to Mr. Eiseman. But it is my contention that Mr. Eiseman is most certainly connected with the conspiracy—

Mr. Austin: That is fined, as long as that is in the record.

Trial Examiner Norwood: Answer the question. Objection overruled.

The Witness: Will you read the question again, please?

(Thereupon, the question above referred to was read by the reporter.)

The Witness: He stated that price conditions in the steel conduit industry, among jobbers, had been chaotic, and that the jobber members of the National Electrical Wholesalers Association urged that the Association press upon the conduit manufacturers the fact that consignment

contracts issued by the manufacturers to the jobbers, making the jobbers their agents, and therefore taking price control out of the hands of the jobbers, might do much to alleviate the chaotic situation.

Mr. Austin: If your Honor please, I move to strike that answer on the ground that it refers to an Association without specifying which association.

Trial Examiner Norwood: I think that can be clarified.

Motion denied.

1699 By Mr. MacIntyre:

Q. What association, if any, did Mr. Eiseman inform you that he was referring to in that connection?

A. I think I answered that at the start of my answer; the National Electrical Wholesalers Association.

Q. Now, did you question Mr. Eiseman, during the course of your interview with him, as to what percentage, if any, he knew that sales were being made in the industry by wholesalers and manufacturers,—

A. Yes, I did.

Q. —after the adoption of this card, or, I mean, after the adoption of this contract, or after these discussions had taken place?

A. Well,—

Mr. Stewart: I submit, if the Examiner please, the witness has said nothing about the adoption of any contract. The witness said Mr. Eiseman told him that, because of chaotic conditions on the jobbers' part of it, they urged that something be done, but that is as far as it goes.

Trial Examiner Norwood: Does this question assume something?

Mr. Stewart: Yes.

Trial Examiner Norwood: Let's read it.

Mr. MacIntyre: I will strike the question and re-

1700 frame it.

By Mr. MacIntyre:

Q. Did you question Mr. Eiseman, at the time that you interviewed him in January, 1940, as to what percentage of sales were being made by wholesalers and manufacturers at the published price cards of the manufacturers?

A. Your previous question—

Mr. Stewart: I submit that the question should be answered yes or no, and nothing added. Did you question him, is the question.

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Trial Examiner Norwood: Yes, I think you might answer that yes or no.

The Witness: I did.

By Mr. MacIntyre:

Q. What, if any, response did Mr. Eiseman make to that questioning, Mr. Carmichael?

A. He said that at least 75 per cent of sales of conduit, in the industry, are made at the card prices.

Mr. Stewart: Now, I move to strike out the answer for the reason it shows on its face that the testimony of the witness is simply repeating the testimony of Mr. Eiseman, which in turn is simply an opinion of Mr. Eiseman, he being a jobber; and without any further showing as to his knowledge of the conditions in the industry, I submit it is more than double hearsay.

1701 Mr. MacIntyre: I submit that the record that we have in these seven volumes of exhibits clearly shows what knowledge Mr. Eiseman had as to what was going on in the industry, and his collaborations and discussions not only with manufacturers but with other representatives of the National Electrical Wholesalers Association; and it is on the foundation of this record that we propose to let rest the testimony in this respect.

Trial Examiner Norwood: I will deny the motion.

By Mr. MacIntyre:

Q. Did you, during the course of your interview with Mr. Eiseman, secure from him any statements relative to a cost survey which was made and reported upon by wholesalers of rigid steel conduit?

Mr. Stewart: Well, when? Do you mean any survey, at any time?

Mr. MacIntyre: Immediately prior to this interview of 1940, or within two or three years prior thereto.

Mr. Stewart: All right.

Trial Examiner Norwood: Answer the question.

The Witness: I did.

By Mr. MacIntyre:

Q. What did you learn from Mr. Eiseman? What did he state to you as to who made that survey and as to the basis of it?

1702 A. He stated that the survey was made for the National Electrical Wholesalers Association, by three

prominent manufacturers of electrical goods, the General Electric Company, the Westinghouse, and the Graybar.

He went on to say that the wholesalers themselves could not afford to make such cost studies, and that, along with the proposal they were making for consignment contracts they felt that there should be a nation-wide cost study made of wholesale costs in handling conduit.

He told me that the results of the cost studies of the three manufacturers of electrical merchandise I mentioned, were turned over to the National Electrical Wholesalers Association, which in turn pressed them on the manufacturers of rigid conduit, urging them to adopt such profit allowances in their price brackets when setting up their price lists and consignment contracts.

Mr. MacIntyre: Mark these the next four numbers.

(The documents referred to were marked for identification "Commission's Exhibits Nos. 707, 708, 709 and 710.")

By Mr. MacIntyre:

Q. Mr. Carmichael, I show you Commission's Exhibit for identification No. 626, and ask you to state whether you recognize that, and, if so, tell us what you know about it?

A. I recognize this as a document given to me by
1703 Mr. Eiseman at the time I interviewed him, and which I made a part of the file in this case.

Q. I show you Commission's Exhibit No. 43, for identification, and ask you to tell us what you know about that document.

A. This also is a document,—if you wish me to describe it,—

Q. Well, tell us what you know about it.

Trial Examiner Norwood: Where you got it.

The Witness: It was given to me by Mr. Eiseman at the time I interviewed him, as mentioned.

By Mr. MacIntyre:

Q. I show you Commission's Exhibit for identification No. 710. What can you tell us about that?

A. This document was handed to me by Mr. Eiseman at the time I interviewed him early in 1940.

Q. And I show you Commission's Exhibit for identification No. 709. What can you tell us about that?

A. This document also was given to me by Mr. Eiseman, at the time mentioned.

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Q. You have told us about these four documents being given to you by Mr. Eiseman. Where did they come from? Were they secured by him from any of his files or records?

A. They came from the files of this company, which he produced for my examination, on my request.

1704 Q. Now, I show you documents marked for identification as Commission's Exhibits Nos. 707 and 708. What can you tell us about those documents?

A. Both of these documents came from Mr. A. J. McGivern, who is or was at the time I called on him early in 1940, the managing director of Chicago Electrical Wholesalers Association.

Trial Examiner Norwood: That is 707 and 708 that you are talking about now?

The Witness: Yes.

1706 Trial Examiner Norwood: Cross-examine.

1720 *Cross-Examination by Mr. Austin.*

Q. Mr. Carmichael, as I understand your testimony—and this question is directed to my understanding of your testimony, of course—you have stated here that Mr. Eiseman told you that what you call the new consignment form of contract changed the situation of the jobber in that he could no longer buy conduit outright. Is that a correct understanding of your testimony?

1721 A. Not entirely correct. The situation was also changed by the jobber having to adhere to the consumer price list.

By Mr. Austin:

Q. It is your testimony, now, then, that after signing that contract, jobbers could buy conduit outright?

A. Not after signing the contract. The jobber could not buy conduit outright, as principal, but was merely an agent of the manufacturer.

1723 By Mr. Austin:

Q. Mr. Carmichael, is it now your testimony that after a jobber signs the so-called new consignment agency contract, he could not buy conduit outright?

A. That is my understanding.

Q. Your testimony is, then, that that is what Mr.

1724 Eiseman told you?

A. Yes.
Q. You never saw the contract?
A. Mr. Eiseman's copy of the contract?
Q. Any consignment contract—
A. The Blake contract?
Q. —the so-called new one that you testified about here.
A. I don't recall a comparison of the two contracts, at this time.
Q. Now, on another subject, you testified with respect to the cost survey about which Mr. Eiseman told you. Did he ever show you that cost survey?
A. No, I do not think he had it in his possession.
Q. May I ask how—
1725 Q. You have testified that Mr. Eiseman told you that the cost survey, which you did not see, was prepared by three leading manufacturers of electrical supplies; is my understanding correct of your testimony?
A. That is right.

1737 By Mr. Robison:

Q. Mr. Carmichael, are we to understand, from your testimony, that Mr. Eiseman stated to you that all of the manufacturers of rigid steel conduit had, at the time that he was talking about, adopted a new form of consigned stock agreement?
A. Yes.
Q. Is your statement positively that Mr. Eiseman stated that all of them had done so?
1738 A. Substantially, our conversation was based on that fact.
Q. No, answer my question "yes" or "no."
Trial Examiner Norwood: Did he specify "all"?
The Witness: It is my recollection that that is what he said, in substance; and that is the way I testified to it a moment ago.

By Mr. Robison:

Q. Mr. Carmichael, don't you see that there might be a vast difference in saying positively that all of them had done something, and his saying, as you say in substance, that all of them had done it? I want to know which of the two statements he made.
A. By the word "all" he meant the industry in gen-

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eral, without naming particular manufacturers and without saying there might have been certain exceptions.

Trial Examiner Norwood: Did that cover the majority of the industry,—

The Witness: A majority.

Trial Examiner Norwood: —as he stated?

By Mr. Robison:

Q. You say now that he said a majority of the industry had done so?

A. Yes. "All" is "a majority." "Substantially all" is a majority. I am not going to go contrary to my
1739 previous testimony. I said in substance that was what he said.

Q. Now I am trying to find out what the element of departure is that you call "in substance," from Mr. Eiseman having said that all of the manufacturers of rigid steel conduit adopted, at the time to which he was referring, a new form of consigned stock agreement.

A. A majority.

Q. That is what he said? That is your testimony?

A. Read it.

Q. I don't mean what you said before; is that your testimony now?

A. Yes.

Mr. Robison: That is all.

1742 By Mr. Stewart:

Q. Mr. Carmichael, to be perfectly frank now, when you got into the situation where you first said that Mr. Eiseman told you that all the manufacturers adopted the contract, and then you modified that subsequently by saying a majority had done so, I am asking you, in all frankness, isn't what you have testified to in that regard your own interpretation of what Mr. Eiseman said, and not what he said? Isn't it your impression of what he said, whether it was all or a majority.

A. It is more than my impression.

Q. You said first "all," and then, as I understood your answer to Mr. Robison's question, you changed it to "a majority"?

A. I said that in substance Mr. Eiseman stated that it was all of the members; that was my previous testimony, some time back.

Q. Well, now, then, are we back to the point where you are now explicit in stating that Mr. Eiseman told you that all the manufacturers of conduit had adopted the new form of consignment stock contract?

A. I will not say that he told me 100 per cent of them had. I merely say that in substance he stated that the industry—which could mean all or the majority—had adopted such contracts.

1743 Q. All right, now, we understand each other, do we, that what he said was that the industry, without specifying any number, had adopted the new form of consignment stock contract, and you added either "all" or "a majority", according to your idea of what he meant, is that it?

A. No, that isn't true. I have answered that question just now.

Mr. Austin: That is all.

Redirect Examination by Mr. MacIntyre.

Q. In response to a question that Mr. Stewart propounded to you, you told him that you secured knowledge as to what changes had been occurring in consigned stock agreements; but you also told him that you did not, so far as you can recall, ever make a comparison of the consigned stock agreements. Do you recall that testimony?

1744 A. I recall it, yes.

Q. How did you learn or how did you secure any knowledge as to the fact that changes had been made in consigned stock agreements?

A. Through the statements made to me, by the Commission's record when received for investigation, by Mr. Friend, by Mr. Eiseman, Mr. McGivern of the Chicago Electrical Wholesalers Association.

Q. Did you interview others in the industry at about that time?

A. Yes, I did.

Q. Name those, please, as far as you can recall them?

A. I interviewed—I can name the companies very quickly, but I am trying to remember the individuals—I interviewed the Clayton Mark Company—

Q. Do you recall the name of the man you interviewed there?

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A. No, I do not, offhand.
Mr. Stewart: Hula?
The Witness: Hula.

By Mr. MacIntyre:

Q. And do you recall the names of others?
A. I interviewed the local branch of the General Electric Company here.
Q. That is, some man in the office there, too?
A. Yes.
1745 Q. And did you interview anyone in the office of the Youngstown Sheet & Tube Company?
A. As I recall it, I did, at their offices down here in the loop; and I can't at the moment remember the man's name. I believe he was formerly connected with Clayton Mark Company.

1749 (Whereupon, at 1:10 p. m., Eastern Standard Time, October 24th, 1941, the hearing in the above entitled matter was adjourned until 10:00 o'clock a. m., Central Standard Time, October 25th, 1941.)

1752 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.
The hearing in Docket No. 4452 is reconvened pursuant to adjournment on yesterday. Please note the appearances.
Call your witness, Mr. MacIntyre.
Mr. MacIntyre: I will call as the first witness this morning at the instance of the Commission, Mr. Oberhauser.

T. W. OBERHAUSER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Oberhauser, what is your business or occupation, please?
A. I didn't get your question.
Q. What is your business and occupation?

A. T. W. Oberhauser. I am the sales manager of wire and tubular products, Laclede Steel.

Q. That is, you are the sales manager of wire and tubular products division of the Laclede Steel Company?

A. That is correct.

1753 Q. How long have you held that position?

A. Well, since 1930. On one of our products we didn't come into operation until later, wire.

Q. Is rigid steel conduit included among the products that you have sold in that position?

A. That is correct.

Q. Were you connected with the company prior to 1930?

A. Came with them in 1929.

Q. In what capacity did you come with the company?

A. I was sales manager for the Laclede Tube Company.

Q. Over what territory does the Laclede Steel Company make sales of rigid steel conduit?

A. In more or less the central west, southwest, and at times on the Pacific Coast.

Q. Does it make sales of and ship rigid steel conduit into Chicago?

A. No, very seldom.

Q. Well, does it make sales in Chicago?

A. We haven't made any for a long time.

Q. Approximately when was the last time that you made such sales?

A. What?

Q. When was the last time that you made such sales or shipments?

A. It has been so long that I can't recall, Mr. MacIntyre.

1754 Q. One year or two years?

A. Oh, I would say longer than that.

Q. Well, give us approximately the amount of time that has elapsed since you made the last sale?

A. Well, we practically never made any sales in Chicago.

Q. Why not?

A. It was not a profitable territory for us.

Q. What is the nearest town to Chicago into which you do make sales?

A. Places like Des Moines, Dayton, Cincinnati.

Q. Do you make sales into Alton, Illinois?

A. Yes.

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Q. Peoria, Illinois?
A. None.
Q. Minneapolis, Minnesota?
A. Yes, we have.
Q. Milwaukee, Wisconsin?
A. No.
Q. Pittsburgh, Pennsylvania?
A. No.
Q. Washington, D. C.?
A. No, sir.
Q. Baltimore?
A. No, sir.

Q. You do make sales and shipments—

1755 A. When you speak of Washington, of course, if that is the Government, that would be a different thing.

Q. For delivery in Washington or Baltimore?
A. Not delivered in Washington, no, sir.
Q. For delivery to the Government at what points?
A. Various points.
Q. Well, will you name some of them?
A. Well, there are a great many. The Navy Department have many yards.
Q. Boston, Massachusetts Navy Yard?
A. We might have. We would not ordinarily. I can recall none there.
Q. Norfolk Navy Yard?
A. No. We would ship in those more favorable to us.
Q. You have made sales and shipments for the account of the Panama Canal, haven't you?
A. We have.
Q. Through what port did you make those shipments?
A. Well, I don't recall that. I don't watch the details of them, but we have made shipments to the Panama Canal.
Q. Through New York?
A. Well, probably by way of New Orleans.
Q. How did you figure the prices that you quoted to the Panama Canal on shipments that you made by way of New Orleans?

A. Well, we figured them on the card plus the 1756 published tariff.

Q. Mr. Oberhauser, I am showing you Commission's Exhibit No. 318. This last explanation which you have just given as to the manner in which you have figured

the prices for the Panama Canal, is that your explanation, as to how you and your competitors arrived at such a uniformity and a matching of prices when quoted by the tabulation?

(Passing exhibit to the witness.)

Mr. Tucker: If your Honor please, I object to that as calling for a conclusion, how the competitors arrived at such prices.

Trial Examiner Norwood: Objection overruled. He may tell us if he knows.

The Witness: Well, those prices, Mr. MacIntyre were probably figured at the card plus the published tariff in this instance.

Mr. Tucker: If your Honor please, I move that the answer be stricken out as purely a guess. He says they were probably figured.

Trial Examiner Norwood: Motion denied. Let the witness complete his answer. Go ahead.

The Witness: In this instance we probably were not anxious for the business, so I guess we probably felt that we simply quoted the card in order to keep our name in the Government's books, for the reason that if we
1757 don't quote, our name after a certain period was removed, and we would no longer get the inquiries.

By Mr. MacIntyre:

Q. Would you then say that bids submitted by you and your competitors under such situation were not for attractive business, but more or less non-competitive and that you are just doing it to get your name to appear on the list?

Mr. Tucker: If your Honor please, I object to that as being speculative and conjectural.

Trial Examiner Norwood: Read the question, Mr. Reporter.

(The question above referred to was read by the reporter.)

Trial Examiner Norwood: Objection overruled.

The Witness: That is correct.

By Mr. MacIntyre:

Q. Does your answer also apply to other situations where you and your competitors are shown to have so submitted bids on a matched basis such as shown by Commission's Exhibit No. 318?

Mr. Tucker: If your Honor please, I just want to caution the witness to not answer questions until I have a chance to object.

Trial Examiner Norwood: Yes.

Mr. Stewart: I object to that on the ground that
1758 there is no showing upon the bids that the question would be proper.

Trial Examiner Norwood: Has the counsel completed his question?

Mr. Stewart: Yes.

Mr. MacIntyre: Let's hear it. I don't know whether I have or not.

Trial Examiner Norwood: Let us have the question, please.

(The question above referred to was read by the reporter.)

Trial Examiner Norwood: I think that is objectionable there. You should ask him a factual question. You are asking him to consider something which you say is shown by the record. Now, if you will show him these bids and ask him what he knows about these particular bids, all right.

I sustain the objection to the question in its present form.

By Mr. MacIntyre:

Q. Mr. Oberhauser, I show you—

Mr. Stewart: Pardon me one minute. Mr. Examiner, would you mind instructing the witness that he is to tell simply what he knows and not to guess and speculate. I appreciate that the answer implies knowledge, but ordi-
narily in these situations you will find these men are
1759 willing to guess at anything.

Trial Examiner Norwood: Well, I think that this witness is familiar with this situation and I think that he can get along wthout my instructing him especially. If I find that he needs it, I will give it to him.

Mr. MacIntyre: I think the record is clear that I am only asking the witness for what he knows and nothing else.

Trial Examiner Norwood: Will you specify these bids and times, and you may ask this witness how he made these prices and his reasons therefor.

By Mr. MacIntyre:

Q. Mr. Oberhauser, I am showing you Commission's Exhibit No. 325. I am asking you whether or not the answers you gave to the questions I asked you concerning Commission's Exhibit No. 318 would apply equally as to the actions of you and your competitors as are shown by Commission's Exhibit No. 325.

(Passing document to the witness.)

Mr. Stewart: I object to the form of that.

The Witness: Yes, sir.

Mr. Stewart: Please, Mr. Oberhauser. I object to the form of the question for the reason that it does not specify what answer he is talking about.

Trial Examiner Norwood: Objection overruled.

1760 Do you understand the question?

The Witness: Yes, sir, I understand the question.

Trial Examiner Norwood: Answer it.

The Witness: As far as we are concerned, that may have been a similar case. I don't recall this bid. It may be that we were not particularly interested and we simply bid current prices.

By Mr. MacIntyre:

Q. Will you please examine that Exhibit No. 325 and after refreshing your memory and recollection from it as far as you can, let us know whether you have any other answer for that than you have already given us.

A. I have no recollection on that, Mr. MacIntyre.

Q. But the testimony that you are giving us is based on your experience with the company, is that correct?

A. Yes, sir.

Q. And your knowledge as to what the company does in such situations, is that correct?

A. Yes, I have knowledge of it.

Trial Examiner Norwood: He asked you if your previous answers were based on your knowledge. Did you understand that?

The Witness: No, I don't just understand the point Mr. MacIntyre wants to make.

Mr. MacIntyre: My—

1761 The Witness: I understood him whether—he wanted to know whether I had knowledge of the prices the company quoted. That is what I answered.

Trial Examiner Norwood: Well, he then asked you, and

I ask you, if your previous answers on the stand here are based on that knowledge.

The Witness: Not necessarily, no.

By Mr. MacIntyre:

Q. Well, your answers—

A. I don't connect one with the other.

Q. But your answers which you have given me as to the policy and practices of your company are based upon the knowledge which you have of what those practices are of your company, is that correct?

A. That is correct.

Mr. MacIntyre: I would like to have you mark these 59-Z-19 to 59-Z-24.

(The documents referred to were marked "Commission's Exhibits Nos. 59-Z-19 to 59-Z-24, incl." for identification.)

Mr. MacIntyre: If your Honor please, I make reference to Commission's Exhibit, for identification, No. 59-Z-19 to 59-Z-24, inclusive, as the Price Card No. 84 of Laclede Steel Company, dated January 20, 1941, which was submitted to me by Mr. Tucker, attorney for the
1762 company, as such card, and I will offer it in evidence at this time as such.

Mr. Tucker: No objection.

Trial Examiner Norwood: Receive it and mark it, please.

COMMISSION'S EXHIBIT NO. 59-Z-19 to 59-Z-24, incl. was offered and received in evidence.

By Mr. MacIntyre:

Q. Mr. Oberhauser, I show you Commission's Exhibit No. 59-H, which is a part of the price cards of your company which have been received in evidence here and which carries there a statement on it as to how the delivered sale prices should be arrived at.

(Passing document to the witness.)

A. Yes, sir.

Q. You recall that statement on your price cards, do you, Mr. Oberhauser?

A. Yes, sir.

Q. And you have used such a method in figuring delivered prices for your company throughout the period of time that you have been with it, have you?

A. Well, Mr. MacIntyre, that was the theory, but it was often not the practice.

Q. Well, did you ever put out any published price
1763 cards of your company that provided for any plan other than that in figuring delivered price quotations?

A. No, that was the customary way of putting out our price cards.

Q. Have you ever seen any price cards of your company or of its competitors which provided for the figuring of delivered price quotations or any prices in any other way than that?

A. Years ago, probably twelve years ago, there was another method.

Q. But in the past twelve years have you seen any such method?

Mr. Stewart: Wait. I submit the witness ought to be given a chance to answer.

Trial Examiner Norwood: Complete your answer, please.

The Witness: The question, please.

(The question and answer above referred to were read by the reporter.)

The Witness: I don't recall any.

By Mr. MacIntyre:

Q. You don't recall any within the past twelve years other than the method show by your cards, is that correct?

A. Well, I can only speak for our own cards. I don't see our competitors' cards only now and then.

1764 Q. You do see your competitors' cards in connection with your work as sales manager, do you?

A. I see them now and then.

Q. And have you ever seen any of those that provided for any method other than the method that is shown in your cards?

A. I don't recall any.

Q. But you have seen that method in your competitors' cards provided for, is that correct?

A. I probably have. I have never examined our competitors' cards closely.

Q. Is it your testimony, Mr. Oberhauser, that you have never seen your competitors' cards and read them sufficiently to know whether or not they provide that method of figuring these delivered price quotations?

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A. I probably have seen that on them, but we are not particularly interested in our competitors' cards.

Q. But you have noticed that in your competitors' cards, is that correct?

A. Sir?

Q. You have noted that provision, that type of provision for using that method of figuring delivered prices in your competitors' cards?

A. It possibly has been on them, yes, sir.

Q. Don't you know that you have seen that?

1765 A. Well, I think I probably have.

Q. Well, can you tell us definitely now whether or not in your experience you have seen them?

A. I think I have.

Q. Now, your cards specify that in the figuring of these delivered price quotations that you take the base point price as is shown on the card and add to it certain freight rate factors.

You recall that provision?

A. Yes, sir.

Q. And these basing point prices are applied as of Pittsburgh and Chicago, you recall that?

A. That is correct.

Q. Now, what freight rate information have you used in adding to those basing point prices at Pittsburgh and Chicago?

1766 A. Our process is to take the published tariff rate from our traffic department.

Q. Haven't you received freight rate information from the Rigid Steel Conduit Association and Mr. Charles Donley for that purpose?

A. We have received freight bulletins from Donley.

Q. And you have used them for the purpose of figuring delivered price quotations to basing point, isn't that right?

A. That was not the reason for getting the cards from Donley. Rather it was for distribution to our wholesalers for their convenience, who have no organized traffic departments.

Q. For their convenience in doing what?

A. Business.

Q. Well, but—

A. Figuring prices.

Q. In the figuring of what prices you would charge them, is that correct?

A. Not necessarily. They might figure their own prices, of which we had no cognizance.

Q. Is it your testimony that your traffic department has not used and your sales department has not used the freight rate bulletins of Charles Donley in figuring delivered price quotations for your company?

A. No, it is not.

1767 Q. Well, what is your testimony on that point?

A. I don't know. They may have used them in remote cases, but that is not our practice.

Q. Is it your testimony that it is not the practice of people in the sales department to use the bulletins of Charles Donley in figuring delivered price quotations for your company?

A. It is not our practice, because we have a thoroughly organized traffic department.

Q. In that event why is it that you found it necessary to buy material from Charles Donley to send to your customers? Why didn't you use your traffic department to compile it for them?

A. I answered that question.

Q. I don't recall the answer. Will you please repeat it?

A. For the convenience of our wholesalers.

Q. Well, I know, but why didn't you use your traffic department that turns out the compilations in running additional ones for your wholesalers instead of buying it from Charles Donley?

A. Well, we felt it would largely be a repetition of Donley's work, those compiled by Donley; they were ready and available and it would have meant a big amount of work for our traffic department to have done the same work and gotten the same results.

1768 Q. In other words the result would have been the same, is that correct?

A. That was my feeling.

Q. Do you know any rate that you ever compiled in your traffic department for use in figuring delivered prices which was any different than the freight rates compiled by Charles Donley?

Mr. Tucker: If your Honor please, I object to that question as being somewhat misleading and as confusing rates in general as a condition of the entire schedule of rates and a specific rate on a particular shipment. I think the witness is confused and unintentionally there is confusion there about that.

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Trial Examiner Norwood: He says, do you know any rates. I think that is clear.

Mr. MacIntyre: Please read the question.

Trial Examiner Norwood: Objection overruled. Answer the question.

The Witness: The question, please?

(The question above referred to was read by the reporter.)

The Witness: I recall none.

By Mr. MacIntyre:

Q. Mr. Oberhauser, do you know in any way in which your customers can use the freight rate compilations
1769 of Charles Donley which you have sent them in figuring what the freight will be on any shipment which you make to them from your plant in St. Louis?

A. That is quite an involved question.

Mr. Tucker: I agree.

Trial Examiner Norwood: Read it.

(The question above referred to was read by the reporter.)

The Witness: Mr. MacIntyre, I don't know just how to answer that for you.

Trial Examiner Norwood: Do you know what those sheets contain?

The Witness: Yes.

Trial Examiner Norwood: Do they contain rates from your plant to their place, to the wholesaler's place?

The Witness: Oh, no.

By Mr. MacIntyre:

Q. How then could any of your wholesalers use those in determining what the rates would be from your plant to their destinations?

A. That isn't the way they figure their prices.

Q. In other words, they could only use those then in the manner in which you provide in your cards, by adding freight from basing points to their destination, is that correct?

A. Well, unless they inquired of us, yes, that was
1770 the only way they could use them.

Q. Isn't it a fact, Mr. Oberhauser, that in making sales to your customers in and near St. Louis that you secure larger amounts on a like quality and quantity of

conduit than you receive from shipments that you make to your customers in Cincinnati, Ohio?

A. That is correct.

Q. Why is that?

A. Well, we have a certain freight pickup in delivering goods to the customer in St. Louis that we wouldn't have to one in Cincinnati.

Q. And that is because you add the freight to the Chicago base, from Chicago to St. Louis?

A. From Cincinnati. You are speaking of Cincinnati.

Q. I am talking about the St. Louis customer, you would add the freight—

Mr. Stewart: May I ask that you start that over again, because I don't think that is clear.

Trial Examiner Norwood: I think we are all right. Proceed.

Mr. MacIntyre: Let's see what the record is now.

(The question above referred to was read by the reporter.)

By Mr. MacIntyre:

Q. In other words, Mr. Oberhauser, with respect
1771 to the St. Louis customer you add the freight to the Chicago base, from Chicago to St. Louis?

A. That is correct.

Q. And as to the Cincinnati customer you add the freight to the Pittsburgh base from Pittsburgh to Cincinnati and deduct from that freight from St. Louis to Cincinnati, is that correct?

A. That is correct.

Q. Now, a similar situation as that applies as to any customers of yours similarly located wherever you sell in accordance with your cards, is that correct?

Mr. Stewart: I object to the form of the question because it doesn't specify what he means by similar. It seems to me that you get into comparisons, and I ask that the question be made specific, what he is talking about.

Mr. MacIntyre: If Mr. Stewart considers that this witness doesn't know what "similar" means, I will withdraw the question.

Trial Examiner Norwood: Wait a minute. He doesn't know the added situation there.

Mr. Stewart: I am not considering what the witness knows. I am considering what I know.

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Trial Examiner Norwood: Read the question, and I think counsel can clarify that.

(The question above referred to was read by the
1772 reporter.)

Mr. MacIntyre: Now, the word "similar", certainly, clearly on the face of this record can mean nothing except customers located such as those in Cincinnati and in St. Louis, with relation to the location of basing points and the freights from the basing points.

Why is it necessary that every time I want to make reference to a question that we must spend four or five pages explaining the previous question and the answers given by this witness?

Trial Examiner Norwood: The testimony he has given here is about one particular case. It covers, it seems to me—

Mr. Stewart: Several situations. That is what I am objecting to.

Trial Examiner Norwood: It may not cover all situations—

Mr. Stewart: That is right.

Trial Examiner Norwood (Continuing): —arising between the points.

Mr. Stewart: That is right, and I want to know what similar situation he is talking about.

Trial Examiner Norwood: Do you understand what he means by "similar" there?

The Witness: I understand what he means but I
1773 couldn't answer that for all cases.

By Mr. MacIntyre:

Q. I am talking about those cases in which you sell in accordance with your published cards.

A. If the prices were figured in the same manner, of course it would be under that same process.

Q. And get the same kind of a result, is that correct?

A. Excepting differences in the price according to the freight rate.

Q. Yes. Do you know of any other factors that would affect it?

A. I don't recall any.

Q. Have you ever seen any price cards of your competitors which provided for f. o. b. mill prices as distinguished from the method of figuring delivered price quotations upon which we have talked?

A. I don't recall any.

Q. Mr. Oberhauser, I show you Commission's Exhibit 3-A and B, minutes of the meeting of the Rigid Steel Conduit Association, Biltmore Hotel, New York City, January 17th, 1935.

Those minutes show that you were elected to the membership, or your company was elected to the membership of the Rigid Steel Conduit Association.

Do you recall the fact of the election of your com-
1774 pany to the membership in that Association?

Mr. Stewart: If your Honor please, I object to that question, unless it is specified what company is meant, because Mr. Oberhauser was employed by the Laclede Tube Company for a time and then later the Laclede Steel Company, so I don't want any ambiguity about the company involved.

By Mr. MacIntyre:

Q. I will have that question apply to the Laclede Tube Company, Mr. Oberhauser.

A. That applies to the Laclede Tube Company.

Q. Do you recall the fact of its being elected to membership in the Rigid Steel Conduit Association?

A. Laclede Tube Company.

Q. Yes, do you recall the application that your company made for membership in that Association?

A. No, I don't recall the application.

Q. Who in your company made the application for membership?

A. I don't know.

1775 Q. Can you tell us why it was that you sent cards to the secretary of such Association expressing your inability to be present?

Mr. Stewart: Now let me put the objection on the
1776 record, that the question is objected to for the reason that it states a fact which is not supported by the record. There is the fact, that he is talking about the Laclede Tube Company. The record shows it was dissolved in 1936, and consequently it could not have received invitations for several years after 1935. Whatever the fact was I have no objection to, but what I am objecting to is that it assumes that the Laclede Tube Company was a member for several years after 1935. That is not the fact.

Trial Examiner Norwood: Well, does it necessarily imply that the company or that he was receiving invitations?

Mr. Stewart: No, the previous question showed that the

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Laclede Tube Company was the company that made the application for membership. Now, if this question follows in sequence, you certainly would be left with the inference that he is talking about the Laclede Tube Company for several years after 1935, which is not the fact. I don't know who was getting the invitations. If you will ask Mr. Oberhauser that, that is all right with me.

Mr. MacIntyre: That is the way I put the question to him, Mr. Stewart, trying to find out just what he knows about it.

Mr. Stewart: That isn't what you asked him.

Trial Examiner Norwood: I would like to hear from Mr. MacIntyre about the situation as described by Mr.
1777 Stewart. Can you elucidate these points, sir, that he has raised?

Mr. MacIntyre: Nothing except what is shown by the record, and what I have stated in my question is what is shown by the record. I have not misstated the record and the record bears me out 100 per cent on that. Now, if the records of these Respondents and of this Association are not correct, I am not responsible for them. They are here, and I am merely stating what their records of their Association show.

Trial Examiner Norwood: Can't you ask this witness factual questions that might fit into your theories there without incorporating your theories in the question?
1778 Mr. Stewart: That is correct.

Trial Examiner Norwood: We will get along much faster.

Mr. MacIntyre: I am basing my question on what the record shows.

Trial Examiner Norwood: I am going to sustain the objection to that question. It is rather involved, and counsel can clarify the whole situation if he will.

By Mr. MacIntyre:

Q. Mr. Oberhauser, the records show that on different occasions where the Rigid Steel Conduit Association was holding a meeting the secretary noted that it received a card from you or other communication from you stating that you would not be able to be present at the meeting that was then to be held. Why was it that your company applied for membership in the Association but you regularly informed the Association that you would not be present at its meetings?

A. Mr. MacIntyre, we never attended a meeting of the Association in our lives. We ran our own business as we saw fit. The meetings did not interest us. In answering and in sending these cards, I did it merely as a matter of courtesy.

Q. You didn't want the secretary of the Association to be offended by not being present, is that correct?

1779 A. Mr. Tucker: I object to that as argumentative.

Mr. Stewart: That's all right. Let him answer.

Trial Examiner Norwood: Let him answer.

By Mr. MacIntyre:

Q. Is that correct?

A. It is just a matter of courtesy.

Q. Well, you felt that it was necessary in your case to give him that much courtesy each time, is that correct?

A. I didn't feel it was a matter in my case. I thought it was just common courtesy for anybody to do.

Q. And you had that feeling each time that you sent him such communication, is that correct?

A. I don't think I did it in every instance.

Q. Well, insofar as you did.

Trial Examiner Norwood: Did the secretary send you an invitation or a notice to appear?

The Witness: Yes, sir.

Trial Examiner Norwood: And this was in reply to that?

The Witness: Yes, sir.

By Mr. MacIntyre:

Q. Why did your company join the Association?

Mr. Tucker: If your Honor please, would you read the question? I didn't get it.

1780 (The question above referred to was read by the reporter.)

Mr. Stewart: Just for the sake of clarification, what company is he talking about? There are two or three different companies involved by this question, one is the Laclede Tube and one is the Laclede Steel.

Trial Examiner Norwood: I think it is very clear that he is talking about this present company.

Mr. Stewart: Oh, well, if that is it.

Mr. Tucker: If your Honor please, I doubt if that is clear, because there is no evidence to indicate whether it was the Tube Company or not.

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Mr. Stewart: That is the point.

Trial Examiner Norwood: Answer the question if you understand it.

The Witness: Well, I have no clear recollection of that. I feel that our only motive was for the good of the industry, in the promotion of the sale and use of rigid conduit.

By Mr. MacIntyre:

Q. You felt it was to the benefit of the industry that your company be in the Association at that time, is that correct?

The Witness: What is the question?

Mr. MacIntyre: Please read the question.

1781 (The question above referred to was read by the reporter.)

The Witness: In the respect that I specified in the previous answer.

Mr. MacIntyre: I would like to have that marked, please.

(The document referred to was marked "Commission's Exhibit No. 711," for identification.)

Mr. MacIntyre: If your Honor please, I now make reference to Commission's Exhibit No. 711 for identification, a memorandum dated December 7th, 1939 which was secured from Mr. S. R. Tyler, an official of Respondent Laclede Steel Company on that date, as a statement of the nature of the organization and a list of the officers of that company, as well as a historical statement of its relationship with two other companies, both of whom are referred to in the complaint. I will ask Mr. Tucker, counsel for the Laclede Company, to concede that the memorandum is what I have stated it to be.

Mr. Tucker: I will concede that it is what it has been stated to be, but I just want to make a statement in connection with it, that I called Mr. MacIntyre's attention to this morning, that is, that there is an error in one of the dates in there, and that the date of termination of the Laclede Tube Company was 1936 instead of 1938, as

1782 stated by the memorandum.

Mr. MacIntyre: Otherwise, will you concede that the facts stated in the memorandum are correct and accurate?

Mr. Tucker: Let me see that?

Mr. MacIntyre: Is that correct?

Mr. Tucker: That is right.

Mr. Stewart: Let me see it?

Mr. MacIntyre: Is that correct, Mr. Tucker?

Mr. Tucker: That is right. As a matter of fact, there is no inaccuracy in it, because I notice here that it says prior to 1938 the Tube Company was dissolved. The actual date was 1936.

Trial Examiner Norwood: Yes.

Mr. King: May I see it, too?

1783 Mr. MacIntyre: If your Honor please, I now offer into evidence Commission's Exhibit No. 711.

Trial Examiner Norwood: Any objection?

Mr. Gilpatric: No.

Mr. Stewart: Do I understand it is accepted with the additional statement of Mr. Tucker that the Laclede Tube Company was dissolved in December, 1936?

Trial Examiner Norwood: He pointed out that that was not an error because it said after—

Mr. MacIntyre: No, "prior to 1938."

Mr. Stewart: What I wanted to make clear was, the language in the document was "prior to 1938"; and I am asking if Mr. MacIntyre is accepting Mr. Tucker's statement that the exact time of dissolution was December, 1936?

Mr. Tucker: That is my understanding.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Of course, I am offering the document for just what it shows: and of course, I will accept Mr. Tucker's statement as to the dissolution of the Laclede Tube Company, a Delaware Corporation, as of December, 1936, as an additional fact.

Mr. Stewart: Yes; that is what I was trying to get at.

Trial Examiner Norwood: All right. It will be received and marked.

1784 COMMISSION'S EXHIBIT NO. 711 was offered and received in evidence.

Mr. MacIntyre: I am taking that along with the statement of Mr. Tucker to the effect that all other information shown on Commission's Exhibit 711 is accurate.

Mr. Tucker: Correct.

Mr. MacIntyre: I believe that is all for this witness.

Trial Examiner Norwood: Cross-examine.

Mr. Stewart: That is all.

Trial Examiner Norwood: No cross-examination?

(No response.)

Trial Examiner Norwood: Thank you, Mr. Oberhauser. I want you to sign this.

You are excused.

(Witness excused.)

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: There being nothing further to come before the hearing at this time, at the request of counsel the hearing is now adjourned to reconvene in Room 332, Office of the Federal Trade Commission, Washington, D. C., on Thursday, October 30, 1941, at ten o'clock a.m. Eastern Standard Time.

1785 (Whereupon, at 1:15 p.m. C.S.T. of Saturday, October 25th, 1941, the hearing in the above-entitled matter was adjourned.)

1788 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on October 25 in Chicago, the hearing in Docket 4452, in the matter of Rigid Steel Conduit Association, and others, is now convened in Room 332, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., October 30, 1941.

Please note the appearances.

Proceed, Mr. MacIntyre.

Mr. MacIntyre: If Your Honor please, we will call as the first witness, at the instance of the Commission this morning, Mr. John P. Simpson.

JOHN P. SIMPSON, being first duly sworn, testified on behalf of the Federal Trade Commission as follows:

Trial Examiner Norwood: Proceed.

Direct Examination by Mr. MacIntyre.

Q. Mr. Simpson, will you please state for the record the nature of your business or occupation.

A. I have been connected with handling freight tariffs, checking rates from them, and interpreting them for the past 24 years.

Q. Well, give us a brief statement, but as com-
1789 plete as you can make it without going into details, the history of your work in that period of time; that is, where you worked and—

A. From 1917 until 1920 I was in minor work in connection with freight tariffs in the War Department. In 1920 I went with the Potomac Division Bureau, a joint facility maintained by the Pennsylvania, B. & O., Southern, Coast Line, and a number of other railroad companies, auditing or revising, as they call it, billing between the northern and southern portions of the territory east of the Mississippi River. The work involved checking the rate, route, minimum weight, package requirements, and so on. In 1926 I went back to the War Department handling land grant freight accounts paid by the War Department. In 1927 I went with the Interstate Commerce Commission, served there for a year and a half examining newly filed freight tariffs, and then went on the rate force, checking the rates in connection with the proceedings before that tribunal. I remained there until the first of June of this year, when I went in the office of Mr.—of the office of Price Administration, where I am chief of the rate section of the Transportation Division.

Q. Well, what are the natures of your duties in this last position?

A. There are two somewhat unrelated duties in the—for the rate section. One is watching the rates as they are filed by the carriers with the various regulatory
1790 bodies for changes which may be detrimental to the national transportation program, and the second one is assisting the other sections of the Transportation Division and the other sections of the—other divisions of the Office of Price Administration in drawing price schedules.

Q. Now, what do you use in connection with that last duty, that is, facilities for the most part?

A. Well normally, we use the rail tariffs in a few instances where they are available, and if time demands we use the price schedules—the price books of the various industries.

Q. And in general what is the nature of such price books that you use in—

A. A price book reproduces with more or less accuracy the rates named in the rail tariffs, and normally they take the lowest standard route, or lowest all-rail-water-rail

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standard route, but there are a number of errors in them, and I always only use them when absolutely necessary because of lack of time.

Q. Now, as to this position that you have told us about which you held last in the I.C.C. for the number of years you have indicated, did you in performing the duties of that position have occasion to work pursuant to and consider that your work was controlled by the rules and regulations of the Interstate Commerce Commission and the laws under which it operates?

1791 A. Most of the work I did with the Interstate Commerce Commission was under the section 6 and the various interpretations thereof and regulations provided in accordance therewith by the Interstate Commerce Commission. I did some work under various other sections of that Act.

Q. And as to this work that you did, did you acquire knowledge of the manner in which those rules, regulations, and laws are applied by the Interstate Commerce Commission?

A. I did, sir.

Q. With respect to freight rates?

A. With respect to rates by rail, and a certain familiarity by other means of transportation.

Mr. MacIntyre: If your Honor please, I now tender this witness as a freight rate expert, and also as an expert on interstate commerce procedure with respect to the application of freight rates, and also as an expert on the usability and usefulness of freight rate compilation.

Mr. King: If Your Honor please, I think, before Your Honor rules on that, we are entitled to have the witness explain his duties under section 6.

Trial Examiner Norwood: Counsel may ask the question on that on voir dire.

Examination on Voir Dire by Mr. King.

Q. What were your duties, Mr. Simpson, under
1792 section 6 of the Interstate Commerce Act?

A. Preparing memoranda for the legal staff, setting forth the tariff provisions in relation to contested or uncontested cases, depending on the docket I was working on from time to time, and the interpretations, the suggested interpretations of those provisions.

Q. Now, will you give us a brief resume of what section 6 provides.

A. Section 6 provides, in general terms, that the carriers shall publish and file with the Interstate Commerce Commission schedules containing their rates, such schedules to be published in the manner prescribed by the Interstate Commerce Commission. These rates must be filed on 30 days' notice, unless the Commission, for cause shown, authorizes a lesser notice.

Q. Was your examination in connection with possible suspension proceedings?

A. I had some experience in the Board of Suspension; yes, sir.

Q. Was the bulk of your experience with the Board of Suspension?

A. No, sir.

Q. Are you a lawyer?

A. I am a graduate of law, but not a member of the bar.

Mr. Stewart: I would like to ask the witness one 1793 question.

Trial Examiner Norwood: Proceed.

By Mr. Stewart:

Q. Mr. Simpson, have you ever had any experience in calculating freight rates on rigid steel conduit?

A. Very likely I did when I was with Potomac Yard and with the War Department, but I would not say definitely "yes" or "no."

Trial Examiner Norwood: I shall receive—

Mr. Welch: I would like to ask the witness a question.

Trial Examiner Norwood: Go ahead.

By Mr. Welch:

Q. Have you ever written anything on the subject of tariff rates? Have you ever had anything published or written?

A. Never published. I have appeared as a witness in a large number of cases, but never anything published under my own name. I have had various compilations of freight rates resulting from interpretation published, not under my own name, however. The latest of such is a statement on citrus fruit reproduced by the Farm Credit Administration a short time ago, a job that I did before I left the Interstate Commerce Commission.

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Q. Have you ever in your testimony set forth your theories as to economic rates and industrial rates?

1794 A. No, sir.

Q. You have not.

Mr. King: May I ask one more question?

Trial Examiner Norwood: Go ahead.

By Mr. King:

Q. In connection with your work on citrus fruit, what was the nature of the document you had prepared for the Farm Credit Administration?

A. The Farm Credit Administration asked for a statement showing the—asked for a statement which would show the comparative cost of shipping citrus fruit, of the several forms, and the juices thereof, from producing points in the eastern, central, and southern producing areas to all portions of the United States.

Q. Did that take in any study of the transportation cost of citrus fruit on the West Coast?

A. Yes, sir.

Q. What is the name of the memorandum?

A. I could not tell you the exact title under which it was published, but Mr. Conlin, F. R. Conlin, told me just last night it was published. I have not seen it as yet.

Trial Examiner Norwood: I shall accept the witness as an expert.

1795 Trial Examiner Norwood: Well, this witness is accepted as an expert rate man. He is familiar with the application of the law by the Interstate Commerce Commission, and will probably be permitted to give his opinion on some matters touching this investigation. We will decide that when the questions come up.

Mr. MacIntyre: Well, I made it rather specific in my tender of the witness that I was tendering him as a freight rate expert, as one who was an expert in Interstate Commerce Commission procedure, and rules and regulations, and as one who is an expert in the usability and usefulness of freight rate compilation.

1796 Mr. King: If your Honor please, I have one suggestion to make. I think that this witness, if qualified at all, is qualified purely under section 6 of the Interstate Commerce Act. I think his testimony should be received in the light of that section. Of course, there are a great many other sections of the Act which, according to this witness' testimony, he has not had any experience with.

Mr. MacIntyre: The witness has stated in his statement of his qualifications as to his other experiences, and I most certainly have not limited my tender to such experience as this witness had under section 6 of the I.C.C. Act.

Trial Examiner Norwood: I think any subsequent interpretation of his qualifications to be made in connection with any objections and in connection with the examination would be based upon the testimony as given here.

Proceed.

Direct Examination (Continued).

By Mr. MacIntyre:

Q. Mr. Simpson, will you please tell us what a freight rate is, as you see it, in its significance to a layman.

Mr. Stewart: That is objected to as incompetent, irrelevant, and immaterial; not the subject of expert testimony.

Trial Examiner Norwood: I do not think he can testify for the layman.

1797 Mr. Stewart: No.

Mr. MacIntyre: He is not testifying for the layman, but he is testifying as a freight rate expert as to the significance of this rate in its application to a layman's activities.

Trial Examiner Norwood: Yes.

Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

You may explain that.

A. A freight rate is a binding offer on the part of a specific carrier, or group of carriers, to transport a specific and described commodity, or group of commodities, over a specific route, or group of routes, during a specific period.

By Mr. MacIntyre:

Q. Now, you used in that connection the words "specific route" and posed that as one of the problems thus involved. Will you give us an example of that problem?

Mr. Stewart: I did not catch that question.

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Stewart: I do not know what is coming.

A. A shipment may be tendered by a conduit firm, or any other firm, in Pittsburgh or any other point, served
by both the Pennsylvania and the B. & O. Railroad,
1798 destined to Washington, with no delivery instructions shown. The freight rate will be different depending on which road is selected. If the Pennsylvania is selected, and the industry is located on the Pennsylvania, it will receive the lowest freight rate. If, however, the industry is located on the B. & O. Railroad, on the siding of the B. & O. Railroad, and the Pennsylvania is selected as the road, an additional charge will be incurred in transporting the shipment from the terminal of the Pennsylvania Railroad out to Bennings and back to the B. & O. station of the B. & O. Railroad.

By Mr. MacIntyre:

Q. Is Washington, D. C., the only point where such a situation would apply with respect to the specific route problem?

A. That applies in almost every city where there is more than one carrier in position to make delivery.

Q. And what can you say as to the application, or differences in the application of freight charges over these various routes?

A. Well, the freight charges are named over a specific route, and the mere fact that one carrier names a rate over its line has no bearing necessarily on the charge made by another carrier for transportation over the second line. The offer of each carrier is independent of the action of the other.

Now, I might give an example. If you have a number
of men bidding on a job of digging a ditch, and two
1799 men charge $100, a third man charges $150—or quotes
that, I should say—and a fourth man gives no quotation, you can't hold the fourth man to either the $100 or the $150 bid, because he has elected not to bid.

That is the same way with a freight rate. A freight rate is offered by a carrier to transport the goods over a specific route for a specific amount of money per 100 pounds, or per other unit. If you elect to ship over that carrier's rails and do not restrict the carrier so it can't transport it over the route offered by the tariff, it will transport it at the named rate; but if you so restrict the carrier that it cannot comply with the terms of the tariff,

or if you elect to use a carrier that will not serve your purposes, you will have additional charges.

Trial Examiner Norwood: Well, where these railroads are going to the same destination from the same initial point aren't the rates usually the same?

The Witness: They are up to the city limits, but there are what are known as accessorial charges, which differ depending on whether you select the road on which the industry is located or on which it is not located.

Now, for instance, in Washington the B. & O. Railroad is located in the northeast part of the city. The Pennsylvania Railroad station is located in the southwest part of the city, some four miles apart. Industries have
1800 sidings on one or the other, but no on both railroads, and to make delivery by the wrong road entails considerable additional expense.

By Mr. MacIntyre:

Q. Would you say, therefore, that there are differences in the charges of a substantial character depending upon which of the two carriers was selected for delivery in Washington, D. C.?

A. The charges run up to, oh, easily $35 a carload, if not more—the difference.

Q. And is that situation peculiar for Washington, D. C.?

A. Not at all. It is true in Atlanta, Ga. It is true to very considerable extent in New York City. It is true to a lesser extent in Chicago. And there are many other cities I could mention.

Q. What are the duties of the carrier if a shipper tenders a shipment without specifying in his bill of lading either the route or the rate?

1802 A. It is the duty of the carrier, under certain circumstances, to transport the shipment via that route or one of those routes over which the lowest rate applies, which rate will give the initial carrier—the carrier to which the shipment was tendered the initial line haul.

I might explain that there might be a lower rate via another and connecting carrier. It is not the duty of the carrier to whom the shipment is tendered to surrender the shipment to the connecting carrier, even though a lower rate existed with the other carrier. There are numerous decisions that I will be glad to file with later date citations, if you so desire.

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By Mr. MacIntyre:

Q. I believe that is sufficient, Mr. Simpson.

Now, I would like to ask whether if some higher rate is specified by the shipper than the applicable rate over the originating line to the point of destination and
1803 no route is specified, what occurs as a practice?

A. If a rate of, we will say, 40 cents, to pick a rate out of thin air, is available over certain routes and the shipper specified the rate of 50 cents on the bill of lading, and there isn't any route which the carrier can find over which the 50-cent rate applies, it is the duty of the carrier to transport that shipment over a 50-cent route and to charge 50 cents per 100 pounds for the shipment.

Trial Examiner Norwood: Suppose they find a lower rate? Would they have to give it?

The Witness: The—if the shipper specifies a rate of 30 cents, and there is a 30-cent route, it is the duty of the carrier to transport it over that 30-cent route, but if there is no 30-cent route, the shipper specifies a 30-cent rate, and the lowest rate checked by the carrier is 40 cents, it is the duty of the carrier to call the shipper and notify him of the error. However, there have been several cases in which the carriers have failed to discover the error and have not notified the shipper. In those cases the Interstate Commerce Commission has ruled that it is the duty of the carrier to collect the legal rate over the route of shipment, and that the shipper is without redress normally, unless he proceeds under a complaint case for reparations.

Trial Examiner Norwood: But if a carrier specifies a 30-cent rate and the initial carrier finds that there is
1804 a lower rate between those points, according to a rule in which the initial carrier makes the first haul, of course, the road to which the shipment is presented, if he finds the lower rate would they have to give it to the shipper?

The Witness: No, sir. They may not give it to the shipper and need not notify him of the existence of that rate. They are duty bound to transport the shipment over a route at the rates designated by the shipper.

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Now, Mr. Simpson, will you please tell us what is the sum total of what a shipper must know and do with respect to the tendering of a shipment in order to insure to him the lowest applicable rate between the shipping point and the destination?

Mr. King: Now, if Your Honor please, I must object to that question. That is a matter about which the Supreme Court has been in some disagreement for a considerable time, as well as the circuit courts. It is a matter that shippers and carriers are continually fighting about. It is one of the purposes of the Interstate Commerce Commission's creation. To have this witness answer that question is seems to me is highly improper.

Trial Examiner Norwood: The way to settle it is to get some information about it.

1805 Mr. King: That would be true, sir, if this witness were one of the Commissioners of the Interstate Commerce Commission; that would make the situation a little different, or if he were a judge of one of the circuits or Supreme Court of the United States, but this witness was an employee whose duties were limited to section 6 of the Interstate Commerce Act, and I don't think he is qualified to answer that question and I object to it on that ground.

Trial Examiner Norwood: Objection overruled.

The Witness: May I answer?

A. In order to determine the freight rates on a specific shipment, it is necessary to know the location of the material to be shipped, which must not only be as to the city in which it is—from which it is being shipped, but the specific siding or team track from which it is to be shipped, or those team tracks which are within trucking distance, if there is more than one, the destination, including the same information as to the point to which it is to be delivered, that is, you must know the exact point of delivery, not merely that it is in New York, but that it is No. 4 West Thirty-third Street; the quantity of the shipment, the packing of the shipment in most cases, what protective service may be necessary in certain instances such as stock and foodstuffs: I don't know whether I mentioned or not the weight of the shipment, the length of the articles, if any of them are over 36 feet in length; the

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1806 weight of each individual piece of the shipment if any of them weigh over 2,000 pounds, and numerous other items which are—which could be mentioned.

Q. Assuming that a shipper knew all of these things that you have just enumerated, then would it be necessary for him to specify any rate in a bill of lading in order to secure the lowest applicable rate over the lowest route as selected by him?

A. If the shipper knew all the factors which would determine the lowest rate and were careful to apply them correctly and having applied them correctly, routed the shipment over that route which offered the lowest charge, after having packed the shipment in the manner so as to enable the lowest charge to apply, and loaded the shipment in such a manner that the lowest charge will apply, it would not be necessary to show the route on the bill of lading in order to secure the lowest rate.

Q. What about the rate? Did you mean rate or route?

A. Rate.

Q. Now, supposing he knew all of these things and acted accordingly—no; strike that.

Suppose he didn't know all of these factors that would affect his shipment in rate making, but nevertheless specified some particular route which did not carry the lowest rate and specified in his bill of lading the lowest 1807 applicable rate over any route between the shipping point and the destination; what would occur—

A. May I ask that the question be read?

Q. —or what has occurred as a practice?

Trial Examiner Norwood: Read his question.

(Question read.)

A. In order that I might properly answer your question, may I ask do you mean he specified figures which represented the lowest rate, or did he specify the term "the lowest rate"?

Q. Specified figures representing the lowest applicable rate over any route between the shipping point and the destination, but nevertheless specified in his bill of lading another route that took a different rate?

A. It would be the duty of the rail carrier to notify him of the discrepancy and ask for a correction of the bill of lading. However, in—for some reason which I am unable to explain, the Commission has not protected the

shipper in a case the carrier failed to comply with his duties and notify the shipper of that error.

Q. I believe you have told us what happens when he specifies neither the route nor the rate.

A. I believe so; yes, sir.

Q. If you have I won't cover that again.

Mr. Simpson, I show you Commission's Exhibits 365, 366, 367, 368, 369, 370, 371, 372, and 82-A to—well, 1808 that is 82-A.

A. And the first one again? 365.

Q. Just a moment. I have one other one that I wanted to add to that.

I also show you Commission's Exhibit 85-A, B, C, D, E, F, G, and H.

Now, will you please tell us whether or not those compilations or information used—I mean information set forth in those compilations could be used for shipping purposes of any product?

Mr. Stewart: Well, now, do I understand from your question that the witness has already seen the documents, or is he going to sit there and look at them?

Mr. MacIntyre: The witness has seen some of the documents—

Mr. Stewart: Well, why don't you say that?

Mr. MacIntyre: —but not all of them, and has examined them.

A. The documents which Mr. MacIntyre showed me this morning, namely, Exhibits CX-365 to CX-372 have absolutely no value other than a—well, they have some little value, but very little value as a shipping guide. They are absolutely not reliable.

Mr. Stewart: What are they?

The Witness: They are price schedules.

1809 By Mr. MacIntyre:

Q. Now, you said "very little value, if any, for shipping purposes." Will you tell us to what degree, if any, that they could be used for shipping?

A. They probably in most cases represent the lowest available rate over some route. A traffic man checking the tariffs and finding that from Pittsburgh, Pa., to San Francisco, Calif., there is named a rate of 67½ cents, will be put on notice that there is probably over some route a rate of 67½ cents, but unless he elects to ship the car over

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a route over which the 67½-cent rate will apply, the charges will be that—those applicable over the shipment—over the route used and not those named in this price schedule.

Q. Well, what would a man have to know in order to be sure that he is selecting a route over which the rate shown in the booklet would apply?

A. Well, I think that my answer to an earlier question will largely answer that, namely, he must know where his shipment is to be loaded, where it is to be delivered, how it is loaded; that is, if there is more than one car, the weight in each car, the packing requirements, the protection against any elements of weather, and numerous other factors which do not for the moment appear to me.

Q. Tell us, Mr. Simpson, whether or not that without the knowledge of such factors and with a tendering
1810 of a shipment to any particular railroad that the shipper has made up his mind to tender it to, that he can secure the lowest available rate over the route of that railroad as easily without any of the information appearing in these booklets to which I have referred you as with them?

A. The books are a fair check, but the primary information must come from the freight tariffs and from no other sources. The freight tariffs are the offers published by the railroad company, filed with the Interstate Commerce Commission or the State regulatory bodies, and the binding only if so filed. These schedules are not filed with any regulatory body and have no binding effect on anybody, so far as payment of transportation charges is concerned.

Trial Examiner Norwood: Now, when he finds the rate in that book, would he have to have further tariff information before being able to secure that rate—

The Witness: Yes, sir.

Trial Examiner Norwood: —to make out his bill of lading so as to secure that rate?

The Witness: May I ask Mr. MacIntyre a question?

Mr. MacIntyre,—

Trial Examiner Norwood: Did you have an answer to my question?

The Witness: Yes, sir; but I want to ask him a question.

1811 Mr. MacIntyre, you called my attention to Exhibit 384-A. Will you give me the freight tariff which was introduced by Witness Donley?

Mr. King: Now, if Your Honor please, I submit the witness should answer the question from the document Mr. MacIntyre has given him and not ask for some other.

Trial Examiner Norwood: Well, if he needs that to clarify his answer he may refer to it.

By Mr. MacIntyre:

Q. One of Mr. Donley's schedules immediately subsequent to the date appearing on Commission's Exhibit 384-A is Commission's Exhibit 85-B.

A. Under date of September 30, 1938, Mr. Charles Donley advised the rigid conduit manufacturers, as shown in Exhibits CX-384-A—well, I am not in a position right now to verify the accuracy of his statement, but I could do so after a little check—"In order to hold the cost at a minimum, we are recommending that the revised schedule show the lowest store-door rate and not undertake to set down the names of the railroads for each destination, that would entail a much larger printing expense and increases the size of our schedule."

Now, he gave us an example, to New York City from Pittsburgh the Pennsylvania rate is 46 cents. The New York Central rate is 56 cents. On page 6 of Com-
1812 mission's Exhibit X-85-B, issued shortly thereafter, bearing date of October 25, 1938, and which Mr. MacIntyre tells me was prepared by the same witness, he shows the 46-cent rate. Now, it is true that there is a 46-cent rate by the Pennsylvania Railroad. That has nothing to do with the 56-cent rate charged and legally due the New York Central for any freight handled over their shipment.

Now, I notice another example, and this is rather curious. That is the case of Erie, Pa. Erie, Pa., he shows the rate of the Pennsylvania Railroad to be 45 cents, the rate of the New York Central to be 36½, 36½ being, of course the lower of the two rates. Well, he does show in this book 36½ cents, but my attention was called to one little book—I can't tell you which one. It was this one. I have here another rate book in which the rate he has shown is 45 cents, although there is—

Q. Which one are you referring to now?

A. Commission's Exhibit 82-A.

Trial Examiner Norwood: Well, does that bear an individual date?

By Mr. MacIntyre:

Q. And what is the date of the book that you are referring to now?

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A. May 25, 1940.

Trial Examiner Norwood: Wait a minute. I
1813 asked a question. That issue is of a little different date?

The Witness: A little different date, but I suspect that the 45 cents is an error, but I am not so prepared to testify until I have checked.

Mr. King: Then I move that the witness' answer go out. I don't believe he should be allowed to give what he suspects.

Trial Examiner Norwood: Motion is allowed. Strike everything after "suspect".

By Mr. MacIntyre:

Q. Well, go ahead and complete your answer, Mr. Simpson?

A. May I give a reason for my thought? There has been no general readjustment of rates since March 28, 1938. One of these schedules is issued on October 25, 1938; the other was issued May 25, 1940. There was no general readjustment of rates between that period. That is the reason I believe that the 45-cent rate is in error.

Mr. King: Do I understand, sir, that that is an explanation of a question which Your Honor struck out?

Mr. Stewart: Answer.

Mr. King: Answer—explanation of an answer which Your Honor has already stricken out?

The Witness: Yes, sir.

Mr. King: Then I think the explanation should go out.

1814 Trial Examiner Norwood: Does counsel move to strike it?

Mr. King: I do, sir.

Mr. MacIntyre: If Your Honor please, I think—

Trial Examiner Norwood: Motion is allowed to strike everything including and after the words "that is the reason."

Mr. MacIntyre: Well, I think there is confusion—

Trial Examiner Norwood: He gave us some testimony there about the change of rates, which can stand—or, rather, the absence of a change of rates. The other will be stricken.

By Mr. MacIntyre:

Q. Well, now, Mr. Simpson, I call your attention again to Commission's Exhibit 34—384-A.

A. Yes, sir.

Q. And page 11-F of Commission's Exhibit 72-Z-9.

Mr. Stewart: Which is what?

Q. That is Z-6—no, it isn't. It is Z-7. 72-Z-7, page 11-F.

I will ask you that in referring to those, whether you can tell us whether you have any explanation for the differences in the rates appearing as shown in those publications between Pittsburgh, Pa., and New York City?

A. The Pennsylvania rate is shown by Mr. Donley
1815 as 45 cents. That is in the letter. In the letter he also states that the New York Central rate is 36½. The rate schedule, or price book, of Exhibit—

Q. That is page 11-F of Commission's Exhibit 72-Z-7?

A. —Commission's Exhibit 72-Z-7 shows the rate to be 45 cents. The only explanation I can give is that the evidence to me is that the compiler of the tariff made a mistake.

Q. You say that it would either be the compiler of the tariff or the statement of Mr. Donley, as contained in Commission's Exhibit 384-A?

A. I am unable to say—

Mr. Stewart: I submit, now, that you are speculating; that until we get the original tariff it would be a guess on the part of the witness as to who made a mistake.

Mr. MacIntyre: I said it was one or the other that made the mistake, if any.

Mr. Stewart: That is immaterial.

Trial Examiner Norwood: Well, I think he is an expert.

Mr. Stewart: He is surely not an expert, Mr. Examiner, on who made the mistake.

Trial Examiner Norwood: He might be—

Mr. Stewart: I don't see how—

Trial Examiner Norwood: —able to give us information bearing on that at least.

1816 The Witness: I am absolutely unable to give any information on the subject. The only testimony that I have is that one of them is in error.

Mr. Stewart: As to who did it you wouldn't know.

By Mr. MacIntyre:

Q. Mr. Simpson, I believe you told us about your use of—particularly under your direction and supervision the use of freight rate compilations,—

A. Yes, sir.

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Q. —or so-called freight rate compilations which you used in developing price schedules?

A. Yes, sir.

Q. Will you tell us how different, if any, fundamentally and in the essentials that such schedules are from the ones that I have called to your attention here this morning bearing Commission's exhibit numbers?

1820 By Mr. MacIntyre:

Q. Mr. Simpson, will you look at Commission's Exhibit 82-A and Commission's Exhibit 370 and tell us in what way that you see that they could be used based on all of your experience with freight rate compilation?

A. If I were to take a rail tariff published by the New York Central Railroad and check a rate from Pittsburgh to New York and find that rate to be 56 cents, as alleged by Mr. Donley in Exhibit No. 384-A, I might turn to Commission's Exhibit 82-A, which is a freight rate book published by the Steel Duct Company, of Youngstown, Ohio, and find there is a rate of 46 cents. That would be a signal for me that there probably is a lower rate via another route.

Q. Well, in—

Mr. Robison: Do these two books that you just referred to purport to give rates as of the same date?

The Witness: Well, there had been no increase in the interval. They are not of the same date, but there has been no general adjustment in the interval.

Mr. Robison: You are testifying concerning something which you consider probable. You are not prepared to say that there were no changes in the rates?

The Witness: That is the situation; yes, sir.

Mr. Robison: What?

The Witness: That is the situation.

1821 Trial Examiner Norwood: Wouldn't one of the two rates be a correction of an error?

The Witness: The New York Central Railroad for many years maintained a service charge for pick-up and delivery service, which was not maintained by the Pennsylvania Railroad; and so, in my opinion, the probabilities are that the rates—the New York Central rates were higher than the Pennsylvania for that period. In fact, I know from past experience that the New York Central rates on pick-up and delivery service are higher.

By Mr. MacIntyre:

Q. Well, in what manner could you use these rates aside from shipping purposes, assuming that you could use them to any degree for shipping purposes?

A. They might be used for fixing prices. That I can't say. But so far as transportation problems go, the only purpose is that of a check.

Q. Well, do you see any way in which they could be used to figure prices?

Mr. Stewart: I object to that on the ground that the witness is not obviously competent.

Trial Examiner Norwood: Objection sustained.

Mr. MacIntyre: If Your Honor please, the witness in his statement of qualifications stated that he has handled schedules of so-called freight rates since he has been
1822 with the Office of the Price Administrator and Civilian Supply and that he has used those in connection with giving information to other people in that organization who are charged with the establishment of price ceilings.

Trial Examiner Norwood: I sustained the objection because you have a great deal of it on that from men who did calculate prices, and it is not a question that needs any further elucidation. I think it would be cumulative.

Mr. MacIntyre: That is all of the witness.

Cross-Examination by Mr. King.

Q. Mr. Simpson, you say you have been with the Interstate Commerce Commission from 1926 until the first part of 1941?

A. 1927.

Q. 1927.

A. Yes, sir.

Q. How many Commissioners are there at the present time on the Interstate Commerce Commission?

A. Eleven.

Q. Do they operate by having divisions?

A. They have divisions, there being five such divisions of three Commissioners each.

Q. Now, will you tell us the purpose of each of the five divisions?

A. Division of work between the smaller groups
1823 of the Commissioners to lessen the burden on the entire group.

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Q. What does Division 1 cover?
A. Personnel, general administrative problems, rate matters, and several other matters.
Q. What does Division 2 cover?
A. Division 2 covers suspension proceedings and certain other matters.
Q. Division 3?
A. I could not tell you offhand.
Q. Division 4?
A. I could not tell you offhand.
Q. Division 5?
A. I could not tell you offhand.
Q. Which division did you come under when you were with the Commission?
A. I came in the section of traffic, which reports to Division 2.
Q. And Division 2 has what under this jurisdiction?
A. Rate questions—that is the administrative part of the Bureau of Traffic, and matters come to it through the Board of Suspension, which is in the Bureau of Traffic, whether on rail and motor questions, and various other questions.
I might state for the record that the total allocation of duties embraces some fifty or one hundred items, and I am not prepared to testify offhand as to the alloca-
1824 tion of each of the fifty or one hundred items.
Q. That is what I desire to elicit from you. There are a great many items covered under all five divisions; is that correct?
A. Yes, sir.
Q. Now, there is a body in the Commission known as the Formal Complaint Section; isn't there?
A. Bureau of Formal Cases.
Q. There is also an informal complaint bureau; is there not?
A. Yes, sir.
Q. Now, what is the purpose of the formal complaint bureau?
A. All cases heard in the manner in which this case is heard are handled by the Bureau of Formal Cases.
Q. The manner of which case? This case?
A. This case. Cases which are heard by oral testimony or before a trial examiner.
Q. Now, what is the purpose of such cases?

A. The adjustment of disputes between shippers and carriers as to rate matters, or rules, practices, regulations.

Q. Have you any idea as to the volume per year of those formal complaints?

A. There have been about 20,000 complaints filed since the beginning of the Commission in 1887. The num-
1825 ber has varied considerably from year to year. It runs several hundred a year.

Q. There are a great many more informal complaints, are there not?

A. The informal complaints run—at the time I left the Commission—I do not know what it is now—at the time I left the Commission they were getting close to 200,000.

Q. The total?

A. The total, and for a lesser period, because that procedure was not started until a later date.

Q. Now, the Commission has jurisdiction, does it not, to award reparation to shippers in instances where they think a shipper has been damaged?

A. In cases covering transportation in part or whole by rail; yes.

Q. Have you any idea as to the amount of reparation awarded per year by the Commission?

A. I do not think the Commission has such figures available.

Q. Do they have a total figure available?

A. I have not seen it if they have such a figure.

Q. Would the amount be substantial?

A. Prior to the Arizona Grocery decision of the Supreme Court of the United States, it was very, very con-
siderable, but it has been greatly decreased as a re-
1826 sult of that decision.

Q. Now, isn't it true, Mr. Simpson, that part of those formal and informal complaints arise because of misrouting by carrier?

A. Oh, yes, sir.

Q. Isn't it also true that a portion of those formal and informal complaints arise because for some reason the carrier has not charged the published rate?

A. No, sir—well, some of them arise because of error in the rate, but usually the decision of the Commission is that the published rate must stand unless it is of itself unreasonable.

Q. Well—

A. The mere fact that the carrier quotes an improper rate is no ground for reparation.

Q. Isn't it true that a good deal, a fairly high percentage of those formal and informal complaints relate to matters wherein the carrier has not charged the lowest published rate?

A. Very few of them. Very few of them on the formal docket.

Q. How about the informal?

A. The informal docket, a large number of them come from cases where the carrier has not charged the proper rate, has misquoted the rate. But they are usually
1827 denied. I do not know of any cases where they were allowed.

Q. But there are a large number of them; is that correct?

A. But they are always denied.

Q. How do you know they are always denied?

A. Because I handled a great many of them. I am speaking from those cases that I handled.

Q. What percentage of them did you handle?

A. Well, I handled about one-third of the cases that came through the office. About one-third of the cases came over my desk.

Q. Informal?

A. Yes, sir.

1830 Q. Now, Mr. Simpson, you stated in your direct examination that there may be a different rate into Washington from a certain point on the Pennsylvania and the B. & O. because of certain terminal charges in Washington. Is that correct?

A. No, sir.

Q. What was your testimony?

A. My testimony was that the rate into Washington is the same, but the charges for making delivery after reaching Washington may be very high over one road and free over another road.

Q. But those charges are in the published tariff; are they not?

A. Yes, sir.

Q. Now, is there any duty, for instance, on the B. & O. Railroad to do other than quote a shipper its lowest rate from a point on its line into Washington?

A. If the B. & O. Railroad has a route from Pitts-

1831 burgh to Washington, as is the fact, and a shipment is tendered the B. & O. Railroad without routing instructions, it is not the duty of the B. & O. Railroad to ascertain whether the siding of the consignee is on the Pennsylvania or the B. & O. until such time as the car reaches Washington, and if there is any additional charge resulting from the reconsignment of the shipment from the B. & O. to the Pennsylvania Railroad to enable delivery to be made at the siding of the consignee on the Pennsylvania tracks, the charges must be borne by the shipper or consignee, whoever pays the charges.

Q. I do not believe you understood my question.

Is there any duty on the B. & O. Railroad in a through carriage by it from, we will say, Pittsburgh to Washington, D. C., to do other than to give the shipper its lowest rate for that distance?

A. Now, who do you mean by "it"?

Q. The B. & O.

A. It is the duty of the B. & O. Railroad to quote the lowest rate to transport the shipment over the route of the lowest rate and to collect the charges accordingly.

Q. On its route?

A. Yes, sir.

Q. On its line?

A. Yes, sir.

Trial Examiner Norwood: And that means to its 1832 freight terminal in the city?

The Witness: Yes, sir; to its freight terminal.

And if delivery to the Pennsylvania terminal is required, that must be added to the B. & O. charge. However, had the shipper selected the Pennsylvania there would have been no additional charge, which accounts for the difference in charges.

By Mr. King:

Q. But that is optional with the shipper as to whom he may select, whether the B. & O. or the Pennsylvania; is that correct?

A. Yes, if he has sidings at both stations. But very few, if any, receivers of freight in Washington have two sidings. There are one or two. But most of them have only one siding.

Q. Well, regardless of whether they have sidings or not, the shipper has the option of selecting which one of the roads he wants to ship over.

A. Oh, yes. That is true.

Q. Now, as I understand it, then, your testimony is that a shipper has an option, he has access to several lines as to which line he wants to use; is that correct?

A. Yes, sir.

Q. Now, if he picks a particular line, and as I understand your testimony it is that that line's only duty is to give that particular shipper its lowest rate over its own line.

1833 A. I do not think you quite understood my testimony correctly. It is not its duty to give its lowest rate, but its applicable rate over that route. It is the duty of the carrier selected to transport the freight over that route and to collect the charges over the route over which the shipment was transported.

Q. Then, do I understand, you, sir, if I deliver a shipment to the B. & O. Railroad for shipment into Washington, and if there is a lower rate on the Pennsylvania, the B. & O. is bound to make the shipment over the Pennsylvania?

A. No, sir.

Q. That is what I thought.

Now, you testified, I believe, that a rate is a binding offer to transport over a specified route for a specified period. Isn't it correct, sir, that that offer is a binding legal duty on the carrier as distinct from an offer?

A. Yes, sir.

Q. It is not an offer as we would understand it between laymen in making a contract?

A. It is an offer as understood by laymen, but it is also a duty.

Q. In addition to being an offer?

A. Yes, sir.

Q. In other words, the carrier—

A. The only difference between this offer and any 1834 other offer as made in normal business commercial practice is that the only acceptance of that offer that need be made is the tendering of freight over that route.

Q. That is correct. And the carrier cannot turn down that offer—

A. No.

Q. —if he has available cars.

A. Not a rail carrier.

Q. Rail carriers. Is that correct?

A. You are right, sir.

Q. So unlike an ordinary person, he has no right to turn down an offer?

A. There are certain qualifications to that. If a carrier had more business than he could transport, or if a bridge washes out, or if there is a congestion of freight, or several other accidents which occasionally happen, it may issue an embargo, but it must issue the embargo against all business and not against any specific shipper.

Q. And in the absence of any embargo it is the carrier's duty to transport merchandise offered to it for transportation?

A. Yes, at the published rate.

Q. Do you have any knowledge as to the length of time it takes the Interstate Commerce Commission to train a man, a qualified rate man?

1835 A. The Interstate Commerce Commission makes all appointments of tariff examiners from those having four years, I believe it is, experience as rate clerks, either with the carriers or with large industrial firms. After having been appointed a tariff examiner they usually serve for three years in that capacity before they are permitted to handle rate matters.

Q. So the Commission considers it necessary to take about seven years before a man is a quailfied rate man; is that right?

A. For their practice.

Q. For their practice?

A. Yes, sir.

Q. I believe you referred to several items in certain exhibits in this case and pointed out errors. Have you ever known a freight agent to make an error in a tariff?

A. Which type?

Q. Rail tariff.

A. An agent of a local station?

Q. Either—

A. Or publishing agent?

Q. Publishing agent.

A. Yes, sir.

Q. That quite often occurs; does it not?

A. Yes, sir. However, may I point out one dif-

1836 ference between the agent's error and the error in this book. The agent's error binds the shipper and binds the carrier. The error in this book misleads but does not bind either the shipper or the carrier.

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Q. Just a minute, sir. You say the error in the agent's published rate binds the shipper. Now, doesn't the shipper have the right to show that that is an error and have it remedied accordingly?

A. He must show cause.

Now, for instance, if the Commission had prescribed a rate of not less than 30 cents nor more than 40 cents, and the carrier intended to publish 36 cents but inadvertently published 38 cents, through typographical error, the Commission would be estopped under the doctrine of the Arizona Grocery case from awarding reparation.

Q. Well, does that type of error often occur?

A. It has occurred.

Q. Then, it is your testimony that if an agent makes a typographical error and includes a higher rate in the tariff than should be in there the shipper can do nothing about it?

A. No, sir. There are instances in which he can do nothing about it. However, the Commission normally corrects those errors as soon as—by giving special permission to permit the carrier to file a new supplement correcting the error on one day's notice, so that they do not re-
1837 main in force for many days, but during those few days, if a shipper shipped over the route where that error occurred, he would be bound thereby.

Q. Would you say that those errors occurred fairly frequently?

A. There are about a hundred special permissions issued each day. I would estimate that one-third of them—I did some work in that branch—one-third of them are the result of tariff errors.

1862 *Redirect Examination by Mr. MacIntyre.*

Q. Mr. Simpson, Mr. King on cross-examination asked you whether or not you had knowledge of certain complaints which had been made to the I.C.C. because the carrier had not charged the published rates. You replied that you did have such knowledge. What published rates were you referring to in your answer?

A. The published tariff rates.

Q. As published by whom?

A. The railroads or their agents.

Q. The railroad complained against in that instance, or some other railroad?

A. If I may take just a word to answer—

Q. Yes.

A. —a freight tariff is in many cases—a freight tariff as published by a railroad or its agent is in many
1863 cases very difficult to interpret, and through error, oversight, or misinterpretation a carrier may quote a rate to—that is, higher than the legal rate, or may quote a rate higher than is contended by the shipper to be a legal rate. If the carrier is convinced of its error it will, through claim channels, pay the claim. If the carrier is not convinced of its error it will allow the case to go to the Commission, and if it is somewhat of a doubtful question it will go in on the informal docket. If the Commission rules on the informal docket that the shipment is overcharged, the carrier will file a special docket for authority to make the award. If the carrier is firmly convinced that there is no merit to the shipper's contention, they will require the shipper to go to the expense of going in on the formal docket, and the general procedure is if the rate charged by the carrier is the legal rate over the route of movement and if that legal rate is of itself a reasonable rate for the transportation over that route, no reparation is awarded even though the carrier may have misquoted the rate or anything else.

Q. Well, in your answer, then, to Mr. King you had referred to the published rate of the railroad complained against; is that correct?

A. Yes, sir.

Q. And to any other?

A. Well, the railroad complained against, its con-
1864 nections, or the tariffs published by the agents for such railroad and its connections.

Q. Now, Mr. Robison asked you about—

A. May I speak to Mr. Robison?

Q. —this fact of less-than-carload rates in some instances being lower than carload rates?

A. Yes, sir.

Q. Do you recall?

A. Yes, sir.

Q. What can you say about such instances when store-door delivery is included as a total charge in a published less-than-carload rate?

A. I don't know of any less-than-carload rates which include store-door delivery which are lower than carload rates not including store-door delivery.

Q. But when you add to that carload rate the charge which must be paid by the consignee for cartage from the railroad terminal to his store door, what can you say?

A. They are—

Mr. Robison: Well, I object, unless the witness shows that he is familiar with the cost of cartage.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: Mr. Robison wasn't so careful about what he considered to be the limits of the witness' knowledge when he was questioning him on that particular point.

1865 Trial Examiner Norwood: Well, that is a different—

Mr. Robison: I don't know what that comment can refer to.

Trial Examiner Norwood: That is a different character of duties, what he is exercising at this time.

Mr. Stewart: I take it that that means two wrongs make a right?

Trial Examiner Norwood: I didn't recognize it as that. Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled. Answer.

Mr. Robison: Do I understand your ruling that Your Honor is accepting this witness as tendered as an expert on cost of cartage or cost of trucking? Unless he is, I don't see how he can—

Trial Examiner Norwood: I am permitting him to answer a question about which both sides have repeatedly asked him and had him answer without objection.

Mr. Robison: I make the assertion, with all due respect, Mr. Examiner—

Trial Examiner Norwood: Yes.

Mr. Robison: —that this is the first time there has been any reference in the testimony of this witness or in 1866 connection with it to cost of cartage apart from published rates of common carriers.

Mr. King: That is correct.

Mr. MacIntyre: If Your Honor please, I am asking this witness this question for an answer by him not as an expert but from his knowledge, if any, he has on it.

Mr. Robison: Well, if any. Let us find out if he has any. That is my suggestion now.

Trial Examiner Norwood: Can you answer that from your knowledge?

The Witness: Yes, sir.

Trial Examiner Norwood: Answer it.

A. The Trunk Line Association, an association—I beg your pardon.

The New England Freight Association, an association of carriers, rail carriers, in New England, who have—employ trucking firms for store-door delivery, publish an additional charge of 5 cents per 100 pounds for the store-door delivery service at certain points, numerous points, in New England. They have on their docket at the present time, unless it has been disposed of within the last two weeks, a number of applications to increase that rate from 5 cents to 7 cents because the trucking—the cartage charges have been—and I am using the verb "have been"—increased to 7 cents. Now, assuming that those statements are true as alleged in the dockets of the New Eng-
1867 land Freight Association—and I have no reason to dispute it—

Mr. Robison: Now, I object to the witness being permitted to answer on a basis of assumptions that he is making—proposing to make from the facts that he has stated.

Trial Examiner Norwood: Well, that point is well taken. Make your answer factual and from your own knowledge.

The Witness: I am not prepared to state as to local cartage charges other than that.

Mr. MacIntyre: That is all.

Mr. Stewart: I should like to ask one more question based on the redirect.

Recross Examination by Mr. Stewart.

Q. It may well be, Mr. Simpson, that the horrible example to which I referred of the difference between the 56-cent rate and the 46-cent rate to New York may be an error in the railroad tariff; is that correct?

1868 A. I testified previously that it was the general practice of the New York Central to charge more than the Pennsylvania Railroad on this store door and pick-up service, so the probabilities are this 56-cent rate is correctly quoted by the agent Donley.

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1870 **Afternoon Session. 1:30 P. M.**

Trial Examiner Norwood: Off the record just a minute.
(Discussion off the record.)
Trial Examiner Norwood: I will state for the record that I have received the following letter from Mr.—
Off the record.
(Discussion off the record.)
Trial Examiner Norwood: —James A. Byrne:

"Monroe, Byrne & Kaye
Attorneys and Counselors at Law
50 Broadway
New York

October 17, 1941.

John W. Norwood, Esq.,
Trial Examiner,
Federal Trade Commission,
Washington, D. C.

Re: Rigid Steel Conduit Asso., et al.
Docket No. 4452.

"Dear Sir:

"In accordance with the request made to Mr. Hatheway at the hearing held October 2, 1941 before you, at the Hotel Abbey, New York City, I send you herewith price cards issued by Clifton Conduit Company, one of the respondents, and by its predecessor, Clifton Conduit, Inc., starting with card 74, to wit:

1871

Card No.	Date
74	November 18, 1936
Revised 74	December 7, 1936
75	March 10, 1937
76	March 15, 1937
77	July 6, 1938
78	August 1, 1938
Bulletin 184	December 29, 1938
80	January 3, 1939
81	November 2, 1939
82	February 8, 1940
83	November 30, 1940
84	January 11, 1941

I also enclose herewith, pursuant to your request, the subpoena addressed to George L. Hatheway.

Very truly yours,

EG (Signed) James A. Byrne."

The letter enumerates certain documents which Mr. Hatheway was requested to produce. I now turn these over to the counsel for the Commission. This request was made on October 2. They consist of price cards.

(Discussion off the record.)

Trial Examiner Norwood: Call your witness.

Mr. MacIntyre: Now, if Yaur Honor please, as to these price cards of the Clifton Conduit Company, I would
1872 like to say that as to the price cards numbered 76, 77, 78, and a letter dated December 29, 1938, and card 80, 81, 82, 83 and 84, I would like to have marked for identification as Commission's exhibits. The others I don't care to have marked.

Trial Examiner Norwood: Well, do you wish to retain the others or return them to Mr.—

Mr. MacIntyre: I can return them, or you can return them. I will not care for any prior to the card 76 here.

Trial Examiner Norwood: Mark them beginning with Commission's Exhibit 712.

Mr. MacIntyre: If Your Honor please, the price cards of this company have had reserved for them Commission's Exhibit 70, and we have marked some of the price cards in that number already, and I ask that these be marked within 70 as additional parts of that exhibit.

Trial Examiner Norwood: That is from Clifton Conduit; is it?

Mr. MacIntyre: That is right; Clifton Conduit Company.

Trial Examiner Norwood: Mark them Commission's Exhibit 70, and give them the letters following the ones already assigned.

(The cards referred to were marked for identifi-
1873 cation "Commission's Exhibit 70-M to 70-X," inclusive.)

Trial Examiner Norwood: Call your witness.

Mr. MacIntyre: Call as the next witness, at the instance of the Commission, Mr. Joseph L. Frascati.

JOSEPH L. FRASCATI was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Frascati, are you here this afternoon in response to a subpoena?

A. I am.

Q. Will you give it to His Honor?

(The witness hands subpoena to the Trial Examiner.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. I believe on the occasion of your previous appearance in this case as a witness, Mr. Frascati, you told us that during May, 1938, in connection with an investigation you made in the rigid steel conduit industry, you visited and interviewed by putting question to him Mr. Herbert S. Blake and also Mr. Robert S. Booth of the Organi-
1874 zation Service Corporation. Do you recall?

A. I believe I did. I did interview those people.

Q. Now, I ask you in that connection—

1875 Q. Will you now tell us, Mr. Frascati, whether or not you recall having asked Mr. Blake on the occasion of that interview what his aim or purpose was in the handling of the work of the Rigid Steel Conduit Association?

A. I did. That is, I do recall asking him.

Q. What did he state in reply thereto?

Mr. King: May we have the time and the place before he—

Mr. MacIntyre: I believe that is fixed by the record.

Mr. King: If it is, I am sorry. I missed it.

A. The first question—

Trial Examiner Norwood: Give us the time, please, in connection with your answer.

A. As I recall it by the question, it was May, 1938. 1938.

By Mr. MacIntyre:

Q. And where?

A. At his office at Church Street.

Q. In New York City?

1876 A. New York City; Church Street, New York City. And he stated that it was the aim of his cor-

poration, that is, Organization Service Corporation, to set up some uniform merchandising policies and procedure in order to stabilize the conditions of the rigid steel conduit industry.

Q. Did he state to you whether or not that his work in that direction had accomplished any of his aims.

Mr. Stewart: Now, just a moment.

I object to that as leading. I have no objection to Mr. Frascati relating the conversation, but I do think that that is getting dangerously close to telling him what he said.

Trial Examiner Norwood: Objection sustained.

A. No, I don't recall whether he—

Trial Examiner Norwood: Wait a minute.

The Witness: Excuse me.

Trial Examiner Norwood: You may—

The Witness: I don't recall whether he stated—

Trial Examiner Norwood: Wait a minute.

The Witness: Excuse me.

Trial Examiner Norwood: The question was ruled out, and counsel may ask another question.

Mr. MacIntyre: That is all for this witness.

Mr. Stewart: That is all.

Trial Examiner Norwood: Cross-examine.

1877 Mr. Robison: I take it, Mr. Examiner, that the testimony has been admitted subject to the general objection of hearsay as to any party not—

Mr. Stewart: He didn't say anything.

Trial Examiner Norwood: There are certain general objections that stand. I don't know that that is one of them.

Mr. Welch: No cross-examination.

Trial Examiner Norwood: No cross?

Thank you, Mr. Frascati.

(Witness excused.)

Trial Examiner Norwood: Call your next witness. Call your next witness.

Mr. MacIntyre: I now call as the next witness, at the instance of the Commission, Mr. S. L. Williams.

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S. L. WILLIAMS was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified as follows:

Direct Examination.

Trial Examiner Norwood: Mr. Williams, you have been sworn?

The Witness: I have.

Trial Examiner Norwood: The witness has a subpoena.

By Mr. MacIntyre:

1878 Q. Mr. Williams, I believe on a previous occasion you have told us what your business and occupation is and that in that connection you have conducted certain investigations into the rigid steel conduit industry and interviewed certain manufacturers of conduit.

I will now ask you if you recall whether or not in that connection you interviewed, visited, and propounded questions to a Mr. Robert M. Garland of the Garland Manufacturing Company at West Pittsburgh, Pa.?

Mr. King: If Your Honor please, now, I make the same objection to this witness' testimony as I made to the last witness.

Trial Examiner Norwood: Yes. Objection overruled.

A. Yes, I interviewed Mr. Robert M. Garland and in his office at West Pittsburgh.

Trial Examiner Norwood: What time?

The Witness: That was in June, 1940.

By Mr. MacIntyre:

Q. Was that Mr. Garland of the Garland Manufacturing Company?

A. I think he designated himself as sales manager representing the trustees of the Garland Manufacturing Company.

Q. Now, do you recall whether or not during the course of that conversation you asked Mr. Garland any questions?

A. Yes, I asked him quite a few.

1879 Q. Well, on the point, though, as to whether he had had any price discussions?

A. Yes, I did. I asked him if they—

Q. Tell us what he told you about that matter, as far as you can recall it.

Mr. Stewart: Now, I should like to get this clear in the record so that there is no confusion about it. I assume that this is offered as an admission by Mr. Robert M. Garland as a sales manager and not the Robert M. Garland who testified in Pittsburgh by way of contradiction. Which is it?

Mr. MacIntyre: This is offered as an admission by one of the representatives of the respondents.

Mr. Stewart: Then I object on the ground that the testimony of a sales manager is not an admission of a corporation, and, secondly, that unless it can be shown that the admission was in furtherance of the alleged conspiracy, that it is manifestly hearsay and there has been no such showing to date. All it purports to be is a conversation between Mr. Williams and Mr. R. M. Garland. And then from the testimony of the witness, as I understand it, the testimony which is sought to be proven came from an employee of the trustees in bankruptcy of the Garland Manufacturing Company, which is not one of the respondents.

Trial Examiner Norwood: Objection overruled.

1880 Mr. Robison: I make the standing objection to hearsay—

Trial Examiner Norwood: Yes.

Mr. Robison: —evidence as not binding on the clients other than those with whom it is directly connected—respondents, I mean.

Trial Examiner Norwood: Counsel have their exceptions. Answer the question.

Mr. MacIntyre: Please read the question.

(Question read.)

A. I asked him if he had ever attended any of the meetings of the Rigid Steel Conduit Manufacturers, and he told me that he had attended quite a number of them. I asked him if there was any understanding as to the prices or any discussion of prices in the meetings, and he said that there was not any in the formal meetings but quite often after the meetings were over they were discussed, and my recollection is that I asked him what was the purpose in discussing those prices and he told me that the conduit prices had dropped about 27 per cent and that the manufacturers discussed ways and means of trying to get the prices back up to where they were before they dropped before that cut by Mr. Barton's Company. I can't recall it now.

Mr. Stewart: Fretz-Moon.

1881 The Witness: Fretz-Moon Tube Company, I believe.

By Mr. MacIntyre:

Q. Well, do you recall whether you asked him any questions about consignment, stock agreements, or specific purchase contracts—

A. Yes.

Q. —and the adoption of them?

A. I did discuss that question with him, asked him if his firm had adopted the—a specific building contract and also a consignment contract. He said it had. I asked him how it came about his company adopted this peculiar—particular contract under which it was then operating, and he told me there had been quite a discussion of the provisions and so forth, of those contracts, and he was reasonably sure that the details of them had been worked out between Mr. Bennett and Mr. Blake and Mr. Quinn, and that Mr. Blake had recommended that all members of the industry adopt them, and that was the reason that his company adopted them, both the consignment and specific building contracts.

Q. Do you recall whether or not during the course of this questioning of Mr. Garland that you asked him anything about—

1882 Mr. MacIntyre: Read the question that I started to ask, if you please.

(Question read.)

Trial Examiner Norwood: Complete the question.

By Mr. MacIntyre:

Q. —about warehouse stocks in the industry?

A. Yes, I did.

Q. Please tell us what he told you—

1883 Mr. King: Just a minute.

I understood Your Honor to sustain the objection to that question.

Trial Examiner Norwood: I didn't think that the counsel objected. He suggested that counsel be not permitted to lead him.

Mr. King: I think the record shows that I objected to the question on that ground.

Trial Examiner Norwood: Let the record so show that I overrule the objection on this one question.

By Mr. MacIntyre:

Q. Will you please tell us what Mr. Garland told you on that occasion, concerning that subject.

A. Well, if I recall correctly, I asked him if there was any understanding in the industry that there would be no warehouse stocks established, and he told me that the jobbers association—that is, the National Electrical Wholesalers Association, had urged the manufacturers to refrain from adopting any—or at least from adopting any—or at least from putting into operation warehouse stocks and had requested that they do away with those already established, and that was one of the things that the manufacturers agreed to do after August, 1937. He told me that they were not supposed to establish any new warehouse stocks, and that was as the result of a request by the jobbers association—wholesalers association.

1884 Q. Did Mr. Garland on that occasion tell you whether or not that he had attended meetings of the Rigid Steel Conduit Association?

A. Yes. He said he attended quite a number of them. I asked him if he remembered which ones, and he said he couldn't recall all of them that he did attend and those he didn't.

Q. Did he indicate to you the period of time over which he had attended them?

A. Well, he said his company had belonged to the association for quite a long time, and that at one time while it was going through the process of reorganization under bankruptcy proceedings he didn't attend them, but from then on he did. That is, he said that he had attended them from 1935. I believe I asked him specifically about that, because it was the period shortly after the N.R.A. was declared unconstitutional, and if I remember correctly he said he attended those meetings quite frequently after that date up until the time I called on him.

Q. Now, I believe that on your previous appearance as a witness in this case you testified that you had interviews with and asked questions of Mr. Lawrence R. Quinn, vice-president of the Enameled Metals Company. Do you recall?

A. Yes, I did. I think I was in his office about two days. I am not sure.

Q. Do you recall now the date on which those
1885 conversations were had?

A. I don't recall the exact date, but I know it was around the middle of June, 1940.

Q. Do you recall whether or not during the course of that interview with Mr. Quinn that you asked him any questions—

A. Yes, I did.

Q. —concerning the conduit—

A. Yes, I—

Q. —committee of the Rigid Steel Conduit Association?

A. Yes, I did. I—

Q. Tell us what he told you about that in response to the questions that you asked him concerning it.

A. Well, the best I can recall that situation, I asked him about how it came about that they adopted those jobbers' compensations in the various brackets on that price card, I believe it was 76, and he told me that those were suggested by the wholesalers association, that they had been worked out by the cost committee, and I believe he told me that they had a meeting, a joint meeting, with the wholesalers association in January, 1936, and that at that time the jobbers had urged that they adopt these consignment contracts with the jobbers' compensations as they had figured out. And I believe he said at the next meeting of the association which, as I recall it, was some time two weeks later—I am not sure about the exact date, but I believe it was January 27 of 1936.

1886 Q. Are you sure that was 1936?

Mr. Stewart: It couldn't be leading, could it?

A. It was 1937. I am sorry. I—because it was in 1936 that these things were being worked up, the latter part.

Q. Did he tell you anything further about that matter?

A. Well, he said that that meeting after the joint meeting was a meeting at which—at which Mr. Blake recommended the adoption of these uniform consignment contracts and the margins of compensation for the jobber as well as the specific building contracts, and, if I recall correctly, he told me that it was the meeting at which Mr. Bennett stated that he was going to adopt those contracts for his company and that was the time they were formally adopted by the other members of the association. However, he said in some instances there were some companies who did not adopt those contracts but they at-

tempted to make their contracts conform to those particular ones which Blake had recommended.

By Mr. MacIntyre:

Q. Do you recall whether or not that on this occasion of your visit to Mr. Quinn's office that you asked him any questions concerning the compilations of freight rates and concerning the traffic committee of the Rigid Steel
1887 Conduit Association?

A. Well, I had noticed in the records previously that there was a mention of a traffic committee. I asked him what the purpose of it was, and who—what men were on it, and I am sure that he mentioned one specifically, and that was Mr. Kim, with National Electric Products. There was also two others whose names I am not sure about, and that was—I believe that one of them was Mr. Welch with Youngstown Sheet & Tube and the other was Mr. Matthews of Central Tube Company, and, as I recall it, I asked him what that committee was for and he told me that there was quite a difference in their ideas as to what freight rates should be charged and that committee was set up for the purpose of trying to equalize the freight rates and to arrive at a common freight adder. I didn't know what he meant by "adder" at the beginning.

Q. Did he tell you why that that was done?

A. Well, I didn't know what he meant by "adder" to begin with, so I asked him, and he explained that it was an amount added to the price to constitute a delivered price, and then I asked him why it was necessary to have them uniform and, if I recall his statement in that respect, he said it was to prevent one manufacturer from quoting a lower freight rate than another on the same product and thereby getting a price advantage.

Q. Did Mr. Quinn tell you anything at all about 1888 who this committee represented?

A. Well, he told me that it represented a committee of the Association for the compilation of freight rates.

Mr. King: Now, if Your Honor please, I suggest Mr. MacIntyre ask this witness what the conversation was and stop referring—trying to refresh the witness' recollection, which is what he was trying to do. I think we are entitled to have the questions limited to what was the conversation and let the witness answer them.

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Mr. MacIntyre: That is exactly—

Trial Examiner Norwood: I hardly think that, because these investigators cover a great many subjects in the course of their work, and I think that the question may specify the subject—

Mr. King: And I would have no objection to that.

Trial Examiner Norwood: —about which he is asking for an answer.

Mr. King: I would have no objection to that, but he keeps going on and reminding the witness after he has called the witness' attention to a specific subject, and I object to that.

Trial Examiner Norwood: I will pay more attention to that.

Read the question.

Mr. MacIntyre: I submit that I haven't done that.

1889 Trial Examiner Norwood: Read the question.

Mr. MacIntyre: I don't think there is any question pending now.

By Mr. MacIntyre:

Q. Mr. Williams, do you recall whether or not that on this occasion of this interview with Mr. Quinn you asked him anything at all about the maintenance of warehouse stocks in the industry by the members of the industry?

A. Yes, I discussed that with him.

Q. Tell us what you recall about what he said about that subject during the course of this interview.

A. Well, as I recall it, I asked him if the company had any warehouse stocks established, and I believe he told me they didn't, that it was a very uneconomical practice to establish warehouse stocks in a territory where the company already had consignment stocks, that its own warehouse stocks would be competing with its consigned stocks and that that was one of the questions that had been discussed at association meetings, and most of the members had decided they wouldn't establish any further warehouse stocks primarily because of a request on the part of the jobbers association that they refrain from doing so.

Q. Did he inform you on that occasion when the warehouse stocks were discontinued?

A. Yes, he did.

1890 Mr. Robison: I object. The witness hasn't said anything about the discontinuance of warehouse stocks. He said he was told that several of the manufacturers determined that they would not establish any further warehouse stocks.

Trial Examiner Norwood: Can you reframe that question, Mr. MacIntyre?

Mr. MacIntyre: I withdraw the last question at this point.

By Mr. MacIntyre:

Q. Was there anything else that Mr. Quinn told you about warehouse stocks that you can recall at this time?

A. Well, I know he told me that the company in practically all—not only his company but others had at one time had these warehouse stocks.

Q. Did he tell you whether or not they were continuing them?

A. Well, he said that they—this jobbers—conduit committee of the jobbers association had requested that they discontinue and—discontinue them, those that were established, and that request had come through either the latter part of 1936 or the first of 1937 to the manufacturers association.

Q. Did he tell you what the manufacturers association had done in response to that request, if anything?

A. Well, I don't recall—

Mr. Robison: I would like to enter an objection, although it is again repetition of the standing objection,

1891 Mr. Examiner—

Trial Examiner Norwood: Yes.

Mr. Robison: —that it is hearsay as to the clients—respondents that I represent, and the standing objection is that the testimony is to be objected to as not applicable to anyone with whom it is not connected.

Trial Examiner Norwood: That is well understood as applying to all the testimony heretofore taken and to all that will be taken hereafter.

Mr. Stewart: I didn't raise the objection to the conference with Mr. Quinn that I raised to the conference with Mr. Garland, but I just assumed that that objection would apply to this testimony as well; that is to say, that it was not in furtherance of the conspiracy, it is a pure narration of the past events, and obviously hearsay. That is what this is.

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Mr. MacIntyre: Please read the last question.
Trial Examiner Norwood: Read the last question.
(Question read.)
Mr. Stewart: Of course, that is leading. That is another objection to that, "Did he tell you what the manufacturers association had done?"
Mr. MacIntyre: If that is a leading question I certainly don't know what is a leading question and what is not.

Mr. Stewart: You are suggesting that the manufac-
1892 turers association—

Trial Examiner Norwood: I am going to overrule the objection and let the witness answer it.
A. Well, as I recall it in that connection, he didn't say that the association took any action toward discontinuing warehouse stocks other than all the manufacturers felt that they could comply with the wishes of their customers, so to speak; these consignment agents were their customers, and as I recall it he said that they—that is, this conduit committee,—and I believe he said that Mr. Drury was the head of that conduit committee at the time, and that the manufacturers discontinued these warehouse stocks at the request of this wholesalers association.

By Mr. MacIntyre:
Q. Did he tell you when that occurred?
A. That was in 1937. He said they were not supposed to establish any new stocks and discontinue those they had in existence as of August, 1937, if I recall the month correctly.
Mr. MacIntyre: That is all.
Trial Examiner Norwood: Cross-examine.

Cross-Examination by Mr. Stewart.

Q. Mr. Williams, do you have an independent recollection of all these facts that you have testified to?

A. Well, the only recollection I have of them is
1893 simply from having prepared some notes after my conversation with Mr. Quinn and then writing it up the same as I would have with any other firm.
Q. I know, but prior to testifying, then, did you look at these notes to refresh your recollection?
A. No, I didn't. The last time I saw these notes, that

I can recall, was when I prepared what we term a final report in the thing, and I think that was in August, 1940, if I recall the date of that.

Q. Then you do have a recollection of these details separate and apart from your notes?

A. Yes, I do.

Q. And that is what you have given us?

A. Yes.

Q. In some respects, as I understand it, you are not quite sure as to the correctness of your recollection?

A. Well, I couldn't be positive about some of the minor—I mean some of the details because I couldn't remember all of them, naturally.

Q. In the conversation with Mr. Garland, do you recall whether he told you that a bare majority of the manufacturers had adopted the uniform contracts?

A. I believe he named most of the manufacturers by name who had adopted them.

Q. You don't remember the names?

1894 A. And I don't recall those. I made a list of them.

Q. Well, would it refresh your recollection if I suggested to you that seven adopted them and six didn't?

A. I am not sure about the numbers, but I believe he told me that most of the large ones did adopt them, except Youngstown Sheet & Tube. I remember that one.

Q. General Electric did not?

A. General Electric and Youngstown Sheet & Tube did not. Central Tube did not.

Q. That is right.

A. These three I recall.

Q. That is right, and what about Laclede? Do you remember that?

A. I believe he said that Laclede's representatives were at none of these meetings and they didn't have anything to do with the adoption of them.

Q. That is right. And how about Clayton-Mark?

A. I don't recall whether I asked him specifically about Clayton-Mark or not because, as I recall it, Clayton-Mark was not a manufacturer at that time, and—

Q. And as to Central Tube, is it not your recollection that Mr. Garland told you—if you knew what he was talking about—that Central Tube merely added a paragraph to its form to clarify previous language in its form?

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A. Yes, that is exactly what he told me about that.
1895 Q. And did you understand from what Mr. Garland told you that it was a matter for the individual manufacturers to make up their minds about?

Mr. MacIntyre: Now, I object as to the witness' understanding.

Mr. Stewart: All right. I will withdraw the form of the question.

By Mr. Stewart:

Q. Did Mr. Garland tell you—

Trial Examiner Norwood: He is asking him as to his understanding.

Mr. Stewart: All right. I will withdraw the question.

Trial Examiner Norwood: Go ahead.

Mr. King: Mr. MacIntyre certainly in numerous instances asked witnesses what their understandings were.

Trial Examiner Norwood: The question is withdrawn.

By Mr. Stewart:

Q. Didn't Mr. Garland tell you that Mr. Blake had recommended the adoption of the contract and that it was a matter for the individual members to decide for themselves whether they would adopt that contract?

A. Well, as I recall that, he told me—

Q. I just asked you whether he told you that.

A. Well, he didn't tell me in those words or the
1896 exact import of them, no.

Trial Examiner Norwood: What did he tell you?

The Witness: As I recall, in that portion of it he told me that Mr. Blake recommended that they adopt these contracts, and some of the members questioned the legality of whether or not they could adopt them, and Mr. Blake said it was perfectly all right if one of the members adopted the contract and other members announced their adoption following the one member, as long as they didn't all agree to adopt the contract.

By Mr. Stewart:

Q. Now, with reference to the warehouse stocks you stated, I believe, that Mr. Quinn told you that they had discovered that the maintenance of warehouse stocks was an uneconomical proposition.

A. Yes, he did.

Q. And did he explain further in what respect it was uneconomical?

A. I think we discussed that thoroughly, the question of whether or not it was uneconomical to have a warehouse stock, and he expressed the idea that he didn't see why his company, or any other company, should have those stocks in the same city, when it had a consigned stock why should it have a warehouse stock? And that it paid storage and had its own facilities at its plant and on these consigned stocks ordinarily it did not pay
1897 storage, that that was taken care of by the jobber.

Q. Well, did you get the impression from what Mr. Quinn told you that the warehouse stocks had in fact been generally abolished after 1937?

The Witness: Will you repeat that?

(Question read.)

A. I got the impression that they had been practically abolished previous to that time. I think he told me that there were only a few warehouse stocks in existence as of that date.

Q. It was a question of the remaining ones that was under discussion?

A. That is right. I believe he said—I believe he said that there were not more than a half a dozen throughout the United States at that time.

Mr. Stewart: That is all. Thank you.

Trial Examiner Norwood: Any further cross? Any redirect?

Mr. MacIntyre: No redirect.

Trial Examiner Norwood: Thank you, Mr. Williams.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. MacIntyre: If Your Honor please, we have no more witnesses present at this time, but I do have some
1898 stipulated testimony that I would like to work out so that we can put it on the record after a short recess, if you would grant us a five-minute recess.

Trial Examiner Norwood: Ten minutes' recess.

(There was a short recess taken.)

Mr. MacIntyre: If your Honor please, on this stipulation concerning certain testimony, it doesn't appear that we will be able to have that in shape for inclusion in the record before some time tomorrow, and in the absence of being able to put that in now, and with the other witnesses not available at this moment, I suggest that we adjourn until 9:30 tomorrow morning with the expectation of going

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through with the remaining witnesses before this time tomorrow afternoon.

Trial Examiner Norwood: Is that agreeable to counsel?

Mr. Bozeman: Yes, sir.

Mr. King: Yes, sir.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: If there is no objection, the hearing is now adjourned to reconvene tomorrow morning at 9:30 o'clock in this hearing room.

(Whereupon, at 2:45 o'clock p. m., October 30, 1941, the hearing was adjourned.)

1901 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4552 is reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C., at 9:30 a. m., Eastern Standard Time.

Please note the appearances.

Proceed, Mr. MacIntyre.

Mr. MacIntyre: Yesterday we noted on the record that you had received the letter from Mr. Byrne, attorney for the Respondent Clifton Conduit Company, with which he transmitted certain documents in the form of price cards of that company in response to a request that I made of his client, Mr. Hatheway, of the Clifton Conduit Company at the New York hearing on October 2. Those documents which we desired have been marked for identification by the Reporters as Commission's Exhibits 70-M, 70-N, 70-O, 70-P, 70-Q, 70-R, 70-S, 70-T, 70-U, 70-V, 70-W, and 70-X, being the price cards of the Clifton Conduit Company from and including card 76, dated March 15, 1937, to and including card 84, dated January 11, 1941.

Trial Examiner Norwood: Off the record now.

(Discussion off the record.)

Mr. MacIntyre: I offer these into evidence as the
1902 price cards of the Clifton Conduit Company as they purport to be on their faces, and ask that respondents' counsel waive any objection as to the identification of them as such.

Mr. Gilpatric: No objection to them.

Trial Examiner Norwood: Received as marked.

COMMISSION'S EXHIBITS NOS. 70-M to 70X were offered and received in evidence.

Mr. MacIntyre: Your Honor will recall that during the course of the hearings in New York City we secured the identification—

Trial Examiner Norwood: With respect to the other documents furnished by this respondent which were not marked and received in evidence consisting of price card 74, dated November 18, of five printed pages, and card 74, December 17, both of 1936, five pages, and card No. 75, dated March 10, 1937, five pages; these will be returned to Mr. Byrne—

Mr. MacIntyre: In that connection I would like—

Trial Examiner Norwood: —by me.

Mr. MacIntyre: In that connection I would like to state that we have in evidence card 74 and card 75 of those dates of that company, which were secured from other sources previously.

Trial Examiner Norwood: Proceed.

1903 Mr. MacIntyre: I would like to call to your attention at this time that during the course of the hearings in New York City we secured the identification of certain parts of Commission's Exhibits 691 and 692. On the strength of the identification as well as the showing of the relevancy and materiality of them I offered certain parts of those into evidence which were received. I made some statement during the course of the handling of those exhibits to the effect that we desired the exhibits received in photostatic form in the evidence rather than in the forms of the originals, and I understood at the time that that would be all right, but I do not believe that the record shows a ruling by Your Honor receiving photostats of the exhibits offered as distinguished from the receipt of the exhibits in the original form. I would like for that to be cleared.

Mr. Stewart: Well, are those the old minutes?

Mr. MacIntyre: They are the old minutes—

Mr. Stewart: We agree to that.

Mr. MacIntyre: —parts of Commission's Exhibits 691 and 692.

Mr. Stewart: We agree to that.

Trial Examiner Norwood: Let the record show with respect to those exhibits photostatic copies are received in evidence.

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Mr. MacIntyre: I would like for that ruling to apply to all except 692-Z-163 to 165, inclusive, which are the
1904 minutes of the Rigid Steel Conduit Section of National Electrical Manufacturing Association, Trade Extension Committee, April 7, 1932. The original of those are in rather faded carbon copy typing, and the photostat that we had made of that particular set did not bring out the writing as clearly as is shown by the original, so I would like your ruling in receipt of photostats have that as one exception, that the original of that particular set of minutes of that particular meeting be received instead of photostats.

Trial Examiner Norwood: This document is marked Commission's Exhibits 162 to 165, inclusive; is that right?

Mr. MacIntyre: 692-Z-163 to Z-165, inclusive.

Trial Examiner Norwood: All the selections heretofore received in evidence from the documents marked Commission's Exhibits, for identification, 691 and 692 are in evidence as photostatic copies, except Commission's Exhibit 692-Z-163 to 165, inclusive, and these are the original carbon copies.

(There was a discussion off the record.)

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: If Your Honor please, I would like to state for the record that Mr. Bozeman, the attorney here for the General Electric Company and the General Electric Supply Corporation and A. E. Newman, has agreed to a stipulation of what Mr. Newman would testify
1905 to if he were called as a witness in this case. I have the statement as it was prepared by Mr. Bozeman and handed to me in typewritten form, and I ask that it be included on the record.

I will ask Mr. Bozeman to state if it is correct as I have referred to it.

Mr. Bozeman: That is correct.

(The stipulation is as follows:)

It is stipulated that if A. E. Newman, one of the respondents herein and manager of wire and materials sales of General Electric Company since July, 1938, were called as a witness in this proceeding he would, if asked to do so, give testimony as follows, and the record may be taken as if he had been called and had given testimony as follows:

1. General Electric Company is one of the largest manufacturers of electrical equipment, electrical supplies and

electrical accessories in the United States; that among its products is rigid steel conduit, which constitutes a small part of its total dollar volume of sales of electrical equipment, supplies and accessories but which will exceed $5,000,000 in volume for the current year; that General Electric Supply Corporation, a wholly owned subsidiary of General Electric Company, and other agents of the latter sell and distribute throughout the United States and its possessions rigid steel conduit manufactured by General Electric Company.

2. (a) General Electric Company was a member
1906 of the Rigid Steel Conduit Association from the time of the inception of such Association to the date of the
1907 resignation referred to below.

(b) General Electric Company resigned from Rigid Steel Conduit Association on July 11, 1938.

(c) General Electric Company paid dues to said Association to the end of 1938 as required by the By-laws of such Association.

(d) A representative or representatives of General Electric Company were present at meetings of said Association and of the Board of Directors of said Association on the occasions indicated by the minutes of such Association and of such Board of Directors. Such representative or representatives were not present throughout all of such meetings and did not participate in all proceedings had at such meetings.

3. General Electric Company issued its price schedules (Commission Exhibit 54) to its distributor agents and field representatives for their use in calculating and determining delivered prices through the method provided for in such schedules; that at the time General Electric Company issued such schedules, it knew that one or more competing sellers of conduit had issued and published price cards which provided for the use of the same method of calculating delivered prices as provided for in the price schedules of General Electric Company (Commission Exhibit
1907 54); and that A. E. Newman has not seen any published price schedules of either General Electric Company or of any of its competitors which provided for figuring prices of conduit in any other way than the method provided for in the price schedules of General Electric Company (Commission Exhibit 54). In a large number of instances the prices appearing in such price schedules were

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not adhered to in sales of conduit and in many instances General Electric Company offered to sell conduit at prices other than those appearing in such schedules.

4. In connection with its price schedules (Commission Exhibit 54), General Electric Company and its agents used delivery charge computations and freight rate schedules (Commission Exhibit 72) in calculating and computing delivered prices to buyers who purchased conduit produced by General Electric Company. On bids relating to jobs for the United States Government, upon requests, General Electric Company has quoted prices f.o.b. factory.

5. General Electric Company makes sales of conduit at delivered prices which are computed and determined in accordance with the method provided for in its price schedules as set forth in Commission Exhibit 54; and where on such sales its delivered prices are those calculated in accordance with such method and at prices specified in the same price schedule, the total amounts received by General Electric Company are such that when an amount equal to the cost of delivery from New Kensington, 1908 Pa., to the point of delivery is deducted from such prices the residue is larger in the case of sales upon the Pittsburgh base to customers near New Kensington, Pa., than in the case of sales upon the Chicago base to customers near Chicago.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: We will call as the next witness at the instance of the Commission Dr. E. G. Nourse, N-o-u-r-s-e.

Trial Examiner Norwood: Have you a subpoena, Doctor?

Dr. Nourse: Yes, sir (handing a document to the Trial Examiner).

DR. E. G. NOURSE, was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. I believe the record shows that you are here in response to a subpoena, Doctor?

A. Yes, that is correct.

Mr. King: I beg your pardon. Is that E. G. or A. G.?

Trial Examiner Norwood: E.

1909 The Witness: E.

By Mr. MacIntyre:

Q. Dr. Nourse, will you please state for the record the nature of your business, occupation, or work.

A. I am an economist with the Brookings Institution here in Washington, Director of the Institute of Economics, which is one part of that Institute.

Q. How long have you been engaged in that position?

A. Well, as Director of the Institute of Economics since 1929, but I joined the staff at the time of the formation of the Institute of Economics in 1922.

Q. Will you please also state for the record a brief history of your training and experience as an economist that preceded your present position, including references to your academic training as well as your experience.

A. Well, as to my undergraduate work, I took the A. B. degree at Cornell University in 1906, having majored in what they call the Department of History and Political Science, which was the name then that they gave to their economics department. My major work was in economics.

In 1915 I took my Doctor's degree in economics at the University of Chicago.

My teaching experience includes the Wharton School of Commerce and Finance of the University of Pennsylvania, some assistant work in the University of
1910 Chicago; teaching at the University of South Dakota, where I was head of the department; at the University of Arkansas, where I was the head of the department of economics; Iowa State College, Ames, Iowa, where I was the head of the department of economics; and the Agricultural Economic Section of the Experiment Station. That is the research part of the work of that institution.

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I came from Iowa State College Experiment Station to the Institute here in Washington.

Q. You have stated that you had taught—

A. I taught subsequently at the University of Chicago and at Cornell University also.

Q. You have stated that you had taught as an assistant at the University of Chicago. What was the nature of the teaching there?

A. That was as assistant to Dr. Laughlin, head of the department. The work was in banking.

Q. And what was the nature of the teaching at the Wharton School of the University of Pennsylvania?

A. Well, that was with Dr. E. S. Meade, who was head of the Department of Finance there. That was money and banking.

Q. And you have told us that you were the head of the department at the University of South Dakota. What department did you have reference to there?

A. That was their combined department called the Department of Economics and Sociology.

1911 Q. And what is the nature and scope of your duties as Director of the Institute of Economics at Brookings Institution?

A. Well, there are two phases of my work there. One is my own individual research work. The other is administrative work of a research character in supervising research studies that are conducted by members of our staff, and the selection of those studies, and the presentation of the results.

Q. Would you tell us something about the nature of such studies as have been conducted under your supervision, or part of which have been conducted by you, and the purpose of them, as you see it?

A. Well, as far as my personal work is concerned, it has always been in the field of marketing, prices, money, that related field of subjects, for a considerable time. Of course, my work was not done in agricultural colleges. My training was not received there, but at Cornell University and the University of Chicago. But I was very much interested in the agricultural aspects of marketing and prices, so for some years I was identified with the agricultural field, and the first of my studies with the Institute of Economics was in the field of American agriculture and the European market, the legal status of agricultural co-

operation, and I supervised and wrote a considerable part on a current study of the Agricultural Adjustment Administration.

1912 Beginning in 1932 my time has been much more exclusively devoted to a study that began America's capacity to produce, of which I was the major author—I had collaborators—and three succeeding volumes on America's capacity to consume, the formation of capital, and income and economic progress.

Since that time I have been devoting my personal attention exclusively to the problem of industrial price making, and with a collaborator published a book on industrial price policies and economic progress. That was published in 1938. Since that time I have been devoting my personal work to a sequel volume along the same general lines.

As to other studies which the Institute conducts, we select —we are an entirely independent research agency, with a backlog of endowment, and then special grants, covering periods of time for various studies, grants from the Rockefeller Foundation, Carnegie Corporation, Falk Foundation of Pittsburgh. We select those topics of timely current importance on which it seems to us that useful practical research work can be done. A number of our recent studies have been connected with war problems, of course; for instance, Dr. Hardy's war time control of prices.

Mr. MacIntyre: If Your Honor please, at this time I tender the witness as an expert economist in the general field of economics and economic theory.

1913 Trial Examiner Norwood: Any objections to his being so received?

Mr. Robison: Mr. Examiner, I am not rising to make any objection. I merely want to make the same statement that I made yesterday on a similar occasion. I feel that I do not know what may be the significance of the tendering of the witness as an expert, and I certainly do not propose to be forestalled from questioning the competency of the witness as to any question that may be asked of him because I do not register objection at this time.

Mr. Stewart: Just so we understand each other, I assume what Mr. MacIntyre is doing is what is ordinarily done by suggesting to the other side to cross-examine an expert to determine whether he is qualified to testify on a certain subject.

Mr. MacIntyre: Within the field in which he has been tendered.

Trial Examiner Wood: Now, if I accept this witness as an expert it will be in the usual way,—

Mr. Stewart: Well, the reason—

Trial Examiner Norwood: —as an expert who is qualified to give his opinion on certain scientific questions.

Now, of course, counsel are free to attack, or put in evidence to show the small degree of expertness, or the absence of expertness, or to attack the weight of anything
1914 that he says.

Mr. Stewart: Well, you see, what I am trying to get clear is that ordinarily—at least it has been my practice that where a witness is offered as an expert you may cross-examine him to determine whether or not he is qualified as an expert, and if you do not object then you are foreclosed from determining—rather, from raising the question as to whether he is an expert qualified to testify as to the subject in issue. Now, that is what I am trying to get at, if that is what Mr. MacIntyre is doing, because, as a matter of fact, I doubt whether you can reserve your right.

Trial Examiner Norwood: Counsel may now examine the witness on the voir dire.

Mr. Stewart: Well, that is what I meant.

Mr. MacIntyre: That is why he is tendered at this time.

Trial Examiner Norwood: That is right.

You may state any objection you wish before I rule whether or not he will be accepted as an expert.

Mr. Stewart: I would like the record to show that if he is offered as an expert, it could only be material—his testimony could only be material, if he is offered as an expert, with relation to the problems involved in the rigid steel conduit industry. There is no showing so far that he knows anything about that, and I therefore object.
1915 Trial Examiner Norwood: Any further objections?

Mr. Welch: I would like to ask if this is the time to ascertain his economic views on the problems involved here. Is this the time to do it?

Trial Examiner Norwood: No. This is the time for you to ask any questions touching upon his experience and anything which would bear on the question of whether or not he is recognized as an expert.

The objection is overruled, and this witness is received as an expert.

Mr. Robison: I understand the rights which I have asked to be preserved are preserved under your ruling.

Trial Examiner Norwood: I think so, yes.

Proceed.

By Mr. MacIntyre:

Q. Dr. Nourse, is there agreement among economists as to the definition of the term "market"?

A. Well, I should say that there was a usage of the term which is understood by economists, but that it involves several different concepts of a market, and that any economist in a piece of precise analysis is pretty careful to differentiate the sense of "market" in which he is using the term.

I think perhaps it is useful there to make a differentiation between a market and a system of markets. There are very narrow and restricted concepts of a market, and
1916 there are very broad concepts of interrelated local or special markets, which, however, go to make up a system of markets, which often are spoke of as a market.

Q. Will you please explain those terms.

A. Well, I perhaps could most easily revert to one that I was familiar with in the agricultural field, and one, of course, which is used pretty generally as an illustration by general economists in discussing in textbooks where they are expounding, that is to say, the wheat market.

1917 Mr. King: Just a minute.

If your Honor please, I object to any further testimony on agricultural markets by this witness as not involving any relation to the matter under consideration here.

Trial Examiner Norwood: Objection overruled.

Finish your answer.

A. (Continuing.) The wheat market illustrates any type, I should say, of a standardized product in a competitive market. Soft coal, perhaps, or pig iron, or almost any commodity of that sort would do equally well.

But to proceed with what I was saying there. Any elevator town, or any place where wheat is sold, constitutes a market for that commodity. That market, however, because of the competition of buyers and sellers in it, its easy communication by rail with other markets, the flow

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of the commodity out from that, and perhaps even the purchase, because some elevators are purchasing elevators, drawing grain into a local market. The point is that they, through the system of organized grain trade, through the system of fluid shipments, through the system of constant telegraphic communication, and reporting of prices, radio communication of prices, if the local market is not cut off from others, but its prices will be related to the prices which are being currently charged in other markets.

Take, for instance, through the middle west. It is common to say that those markets are based on the
1918 Chicago market; that the Canadian markets are based on the Winnipeg market. But the Chicago market and the Winnipeg market both in turn are related to the Liverpool market. And so in that case we talk of a related market in wheat, which, through these flexible arrangements, enables the competition to keep prices constantly adjusted to each other. Now, that means in the price making sense that prices would be equalized among those markets through the ordinary action of traders trying to promote their own advantage, whether buyers or sellers, and you could say frequently attempts are made to discover the basic wheat price within that system of markets and to have the local prices consistently related to that price basis, so that you would have a price which presumably would be the same at all elevators, or approximately the same, and a local shipping point would be in consistent relation with markets in elevator towns. Because of particular railroads leading into Kansas City, Kansas City prices would be related to that of other wheat markets.

So in the broadest definition I should say a market means the whole system of trading within which that sort of relationship maintains. In the narrowest sense it would relate to one transaction center. Some economists go so far as to say a market is that area within which one price prevails.

Q. And what can you say as to whether or not the forces expressed in the wheat market as you have de-
1919 scribed have any application in the industrial markets, or markets for industrial goods?

A. Well, I should say there that one has to make a distinction between two types of industrial goods.

Q. Well, let us restrict the answer to a standardized industrial good.

A. Well, if you take a strictly standardized industrial commodity—I mentioned a moment ago pig iron, bituminous coal, a considerable number of raw materials, or slightly fabricated goods—then this same situation in a market of many producers have a strictly standardized product, I should say the same thing essentially holds.

Mr. Stewart: I did not catch that last part.

The Witness: The same situation essentially.

By Mr. MacIntyre:

Q. Are there any particular concepts as to the price-making properties in such markets, Dr. Nourse?

A. Well, the assumption of that whole thing is that you have a free fluid type of market, and, as I said, the price-making in this would be that those traders all come together in one transaction center, knowing all the peculiarities of that market, and so forth, and will naturally come to one price.

If a part of a town is cut off from the rest, there might be a slight discrepancy. But if all the elevators are all together, keeping in touch with each other, you would
1920 say you have substantially one market there.

Then you would have the differences as you would get, let us say, a shipping charge. You would have two elevators located in different places, where the cost of transportation to Chicago is different, and you would expect to see substantially that difference of transportation charges reflected in the price of the local market.

Q. And what determines that specific price or price level which is reached?

Mr. Stewart: I didn't catch that.

Mr. MacIntyre: Please read the question.

(Question read.)

A. I should say that is the interplay of the forces of supply and of demand as they come together over the largest area over which this process of equalization takes place, so that you would have local conditions affecting the market in the section, let us say, the hard wheat section or the soft wheat section of the United States might be affected by particular weather conditions in that area, but that those specific differentiations will be equalized by the general conditions of demand over an area as large as that over which stocks move back and forth in response to

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price differences in which traders try to get the greatest advantage, purchase, highest prices of sale; lowest if it is the purchase.

Q. Is there a recognition in the field of economics
1921 as to price markets where prices are not determined in the manner in which you have outlined?

A. Yes. The picture which I have been painting, I think I attempted to place the emphasis upon that as a fully fluid competitive situation in which information is broadly and quickly distributed. Movement can take place and traders are alert to take advantage of any difference. Of course, the economist recognizes that there are a great many markets that conform only imperfectly to that sort of an ideal picture.

Q. Well, what terms do you recognize in the field of economics as applied to some other types of markets, price markets?

A. Well, of course, where differences of that sort occur I suppose the expression "controlled market" is the one which is most—you might have an isolated market. You would have no positive control, but a market might be so remote that it was isolated from the general system of markets, and so is this as an independent and separate market that might not get its price in line with the general price structure. Where the facilities are available and there is a difference, I should say the economists are most likely to ascribe it to a controlled or artificial barrier within the equalization.

Q. Do economists have any particular terms that they use in tagging or describing such controlled price markets?

Mr. Stewart: I am sorry. Did you say "tagging"?

Mr. MacIntyre: "Tagging."

1922 A. Well, I don't happen to think at the moment of a particular term other than "controlled market" and "monopolized market" or some phrase of that sort, anything which is a qualification of the antithesis of a free and flexible market.

Q. Do economists have any particular term to which—which they apply to price as arrived at in such markets as controlled or monopoly markets as distinguished from any term that they apply to the word "price" arrived at in a competitive market?

A. Well, I don't know that I can think of anything other than using the same words, such as a controlled price or

monopolistic price or rigged price, or whatever the phrase might be, scores of phrases.

Trial Examiner Norwood: Prices like that, do they respond to fluctuations as between supply and demand?

The Witness: No, because your flexibility and fluidity of adjustment is lost in one of that sort. You would get a certain rigidification there where you wouldn't have the price of that sort following the more general trends.

By Mr. MacIntyre:

Q. Are prices in such controlled markets sometimes referred to by economists as administered or established prices?

A. Yes. Of course, the word "administered prices" doesn't very well apply to a large market of many producers in a standardized product. Administered prices applies primarily to a market of differentiated products.

1923 Q. Are you familiar, Dr. Nourse, with the writings of economists on the subject of the behavior of prices on a standardized commodity in a competitive market and under conditions of competition?

A. Yes, I have read an awful lot first and last.

Q. Will you tell us what the behavior of prices under such conditions are as those conditions are recognized among economists?

Mr. Stewart: Now, may I inquire is the question What does the witness say is the opinion of economists pro and con on the subject? Are you asking him to summarize what they say, or just what is the purpose of the question?

Mr. MacIntyre: The question merely simmers down to one, is he acquainted with the concept of economists as expressed in their writings in the field of economics—

Mr. Stewart: Then I object—

Mr. MacIntyre: —as to the behavior of prices in and under such conditions.

Mr. Stewart: Then I object on the ground it is asking the witness to interpret the writings of economists, which writings are not produced so that we may cross-examine as to such writings.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Do you mean by that to

1924 answer from his—

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Mr. MacIntyre: I will strike that last—

Trial Examiner Norwood: The theories which he has developed from his study and experience? He may give us that.

Mr. MacIntyre: I will withdraw that question.

By Mr. MacIntyre:

Q. What is the economic theory as to the behavior of prices on a standardized article in a competitive market under competitive conditions, Dr. Nourse?

Mr. Stewart: Now, may I inquire, are you asking the witness' opinion or are you asking him to interpret the opinions of others?

Mr. MacIntyre: It goes to his opinion, his economic theory and his knowledge of economic theory.

Mr. Stewart: That is all right. I have no objections to that, if you are asking for his opinion.

Trial Examiner Norwood: Answer the question.

A. Well, it seems to me that is substantially a resumè of what I just have been saying. I think that there is no reason to dissent from the opinion, which is prevalent, I think, among traders and among economists alike, that under the conditions of a competitive market of many parts inter-related such as I have outlined there, that you do have this equalizing process under way just in response to the ordinary trading instincts of those who buy and sell in those markets.

1925 By Mr. MacIntyre:

Q. Well, does the price which you have described as developing in a competitive market and which eventuates out of the conditions which you have just described tend to be a uniform price at any given time?

A. Well, a very common saying of economists is, "There can not be for a commodity of this sort more than one price at a time in a market." It comes back to what I stated as the last definition I gave in previous testimony, to the effect that the narrowest definition economists give of a market is that area within which prices are uniform.

Q. Would you say that that is the concensus of economic theory on the subject?

A. Yes. I think as a basic body of principles there is no dissent from that among economists, that I know of.

Q. Now, does that theory as you have outlined it—well,

say, to what extent does it apply to the making of price quotations as distinguished from actual sale prices?

A. Well, the introduction of the word "quotations" there, I think, calls for a very careful discrimination, because you have wheat market quotations. What are they? They are the price current of the market as reported by some agency; the federal government largely now has supplanted practically all private price reporting agencies,

but your quotations in a public market of that sort
1926 represent prices which have taken place, that is characteristic of yesterday's prices. Now, we speed it up on the radio so that on the Farm and Home Hour you get this morning's price, the last hour prices, but they are prices in what are ordinarily brought about in what economists call the higgling of the market. Now, when we talk of quotations in an industrial market I should say characteristically that is used to refer to future prices rather than past prices. That is to say, we are quoting this for sale at prices.

Q. What can you say as to whether or not this theory of the uniformity of price in the market in its application to quotations in the industrial field—

Mr. Stewart: What was that question?

(Question read.)

Mr. Stewart: In its application?

Mr. MacIntyre: Whether or not it has application in the industrial field.

Mr. Stewart: Oh.

A. I should say there was a very considerable difference, that if you take an industrial producer making quotations for the future he is—his quotations are colored primarily by his individual supply conditions; that is to say, he would say, "I can afford to offer this commodity in the market in the future at such a price," and it would be his individual price reflecting his—the conditions of his in-

dividual enterprise, the basis on which he thought he
1927 could take business and on which he could hope to attract business; so that basically I should think we would start not with a uniformity there but with an essential difference, because the producer does have the peculiar conditions of his plant and location and organization, and so forth, and working those out to his formula of what he can afford to produce that commodity over the future if orders come in he would have his individual price. Now,

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that might be colored by his knowledge of what other producers were producing for. If he figured out and his price was too high, why, there is no use of quoting a price of that sort, but there would be there purely an estimate of conditions, his consideration of the price that he could afford, and then he would offer that as a take-it-or-leave-it price.

By Mr. MacIntyre:

Q. Well, does the theory of uniformity of price in the market to which you have earlier addressed yourself this morning have application, then, as to the quotations in the industrial field and on industrial products offered for sale?

A. Well, I should say only in a secondary sense, that you would have the quotations of a producer reflecting his individual character of his plant, character of his source of raw materials, the character of his location, and so forth; if you had several producers in the same town who were buying raw materials in the same market, practicing the same technique, you would expect that the price in
1928 that town, as in your local elevator town, looking at it as you did before, that that price in that town—quotations would be uniform in that town. In another section where conditions were different you would probably find differences.

Q. Would conditions which you have in mind there include such things as efficiency in management, differences in transportation costs, and the like?

A. Well, of course, what I was contemplating was the quotation that the manufacturer would make at his plant. Now, those would reflect differences in efficiency. Anything, delay, back of his producing process that would enable him to produce the product on the loading platform would be reflected there, insofar as he thought it was expedient in view of what he knew that other people were charging in the same place. I don't see that the transportation question would come in. That would be the question which normally the purchaser would have to ask himself, "Here I find the product I want quoted in different places. Well, what is the cost of getting that product to my market or to my place of use?"

Q. Well, Dr. Nourse, is there any economic theory, as far as you know, that would tend to explain the identity of price quotations as distinguished from an identity or a uniformity in actual selling prices under competitive conditions in a market?

A. Well, I think there is a little contradiction there.
1929 To say "uniformity under competitive conditions" seems to me to be rather a contradiction of terms; that presumably any manufacturer would in his—even in his quoted price which might be modified, of course, by the terms of sale, and so forth, but even in his quoted price if he has a greater efficiency or a superiority he would tend to have it reflected in the price which he makes. If he is going to attract additional business he would have to do it in a competitive market on the basis of price. Now, if you find quotations of producers who presumably do have differences in their production situation and in their cost and they all are making the same quotation, it would seem to indicate either a miraculous agreement on what is good policy amongst them, or else some means of working out a uniform plan of quoting the same price as being desirable for the trade as a whole, for the group, whatever it may be.

Mr. Robison: May I ask at that point when you said in that last sentence "the miraculous agreement," did you mean anything more than consensus?

Trial Examiner Norwood: Counsel may cross-examine the witness later.

Mr. Robison: Well, the trouble is these expressions of that sort which are sometimes used inadvertently, after a period of an hour or two we forget. It was not my intention to interrupt except to that extent.

1930 The Witness: No objection to answering. What was my word? "Miraculous agreement?"

Mr. Robison: "Miraculous agreement," as you put it.

The Witness: Well, I should say consensus is a fair synonym for that.

By Mr. MacIntyre:

Q. Is there any economic theory, so far as you know, that would tend to explain such a situation as you have just outlined?

A. Well, you mean the situation of producers—

Q. Quoting identically the same—

A. Over a considerable area of different production centers?

Mr. Stewart: I am sorry, but I didn't catch that question.

Trial Examiner Norwood: Read it.

(Question read.)

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Mr. Stewart: Well, I suppose the witness knows what you are talking about. I don't.

Mr. MacIntyre: Well, I think he is likely to forget, as Mr. Robison outlined a few minutes ago, if we go on for a considerable period before we can direct his attention back to what he had been explaining.

Trial Examiner Norwood: Do you understand the question, Doctor?

The Witness: Well, as I understand it, the ques-
1931 tion is Is there any general economic theory which would explain why the quotations of producers in different places differently circumstanced as producers, why the quotations would be on a uniform basis? And I should say—

Trial Examiner Norwood: That is, producers with different costs?

The Witness: With different situations which I presume that would mean different costs—

Trial Examiner Norwood: Yes.

The Witness: —of production, would quote at their plants the same price as that.

By Mr. MacIntyre:

Q. Well, as to any market under competitive conditions, is there any economic theory, so far as you know, that would tend to explain all producers or sellers quoting identically the same price for future sales?

A. Well, of course, there I think we want to distinguish between quoting in a selling market and quoting in a buying market, but I think the answer would be no in either case, because certainly there would be nothing, as I understand it, in the forces of competition which, in the absence of a—a worked out understanding, could bring prices in delivered markets to the same point. Now, as to the—in the producing or selling market, since these markets are in the nature of the case different as to their productive situation
1932 and reflected in cost, the expectation of a competitive theory would be that there would be differences in quotations even in a selling market.

1933 Q. Will you state what the economic principle of indifference is, if you understand that term?

Mr. Stewart: Indifference? Is that the word?

A. Indifference. Well, yes. That has been a word which has been put in quotation marks in the price dis-

cussions. It simply stems from the oldest sort of classic doctrine of the economic man operating in a market, that he is completely impersonal, he is looking for the main advantage; he doesn't care who he sells to, but he wants,—as we used to say in the live stock market, he is looking for the high dollar. He doesn't care which market he ships to or which person he sells to or whom he buys from, and that, of course, tends to the working out of this fluidity and equalization that I was talking about in the earlier discussion of competitive markets.

Q. Well, does that mean when you talk about the high dollar, that it makes no difference to him from whom he gets that so long as it is the high dollar?

A. Well, it would be the low dollar, looking at it from the buyer's standpoint.

Q. From the seller's side?

A. From the seller's side. He doesn't care where he sells, but he wants to sell in the market of the best realization, sales realization.

Q. Well, as to the buyer that means the low dollar?

A. Yes.

1934 Q. He doesn't get—

A. He wants to buy the cheapest market, the seller wants to sell him the highest market in terms of net realization.

Q. It doesn't matter to the buyer whose goods it is, if it is homogeneous goods he is looking at it for the low dollar?

A. Yes.

Q. Does the assumption under that economic principle that no buyer will pay a higher delivered cost for one seller's goods than for another, on a homogeneous or standardized product, involve an assumption also that no seller will quote a lower delivered price?

Mr. Stewart: Of course, Mr. Examiner, that is highly leading.

Mr. King: Just slightly.

Trial Examiner Norwood: What is that?

Mr. Stewart: That question is highly leading. I ask that it be read.

Mr. MacIntyre: I can't see it.

Mr. Stewart: Maybe you can't. That is the reason I am objecting.

Trial Examiner Norwood: Read the question.

(Question read.)

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Trial Examiner Norwood: I think that this will not affect the answer.

Mr. Stewart: All right. I will withdraw the 1935 objection.

Trial Examiner Norwood: I think, rather, it is harmless.

Mr. Stewart: All right. I will withdraw the objection. I guess so.

A. Well, I should say that the natural competitive process of making prices on the part of producers is of deciding what he can produce and sell in his local market. Now, beyond that point he may follow an individual strategy which would be—which would take the form of concessions in special situations, but so far as a quotation, I would have to refresh my mind. Did you say in terms of quotation or in terms of sale?

By Mr. MacIntyre:

Q. This is in terms of offering to sell.

A. In terms of quotations I don't see that he could quote in a competitive situation—could quote anything except a price which reflects his costs of production. Beyond that, if he is a large producer he might work a—he might evolve a scheme of differentiation of absorption of costs to build up certain parts of his market even at the expense of certain others to effect a total strategy, but that is getting into the realm of administered prices, of course. In other words, if you depart from that, it seems to me you are out of the field of a competitive market
1936 and into the field of the administered or somewhat controlled market in response to a strategy which is quite different from that of a completely fluid and competitive market.

Q. If you were to assume a seller makes a practice of accepting from his various customers different sums of money per unit for his standardized product, and if there were not differences in the quality or cost of selling involved, on what economic theory can that practice of the seller be explained?

A. Well, I think I should say—simply repeat what I said before, that he had found himself in a situation where some strategy, a modification of competitive—ordinary competitive fluid price-making would, he thought, work out to his advantage.

Q. Suppose you assume that the delivered cost to a buyer of a standardized commodity is identical, when figured from each of a number of competing sellers who are variously located freightwise, with reference to the buyer's destination, is there any consensus of expert economic opinion to the effect that the purchaser under those conditions and under competitive conditions may normally expect that the delivered cost to him will be identical as quoted for future sales by all sellers in his market?

Mr. Stewart: I take it the answer is "yes" or "no," not any further, if that is all the answer is to be.

1937 Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Stewart: Now, I assume that that just calls for a "yes" or "no" answer as to whether there is a consensus.

Trial Examiner Norwood: Well, I think in the interest of time he may, if he finds that there is and decides that there is, he may give us what it is.

A. I would be rather hesitant in answering that question, because in the earlier questions we were dealing with the relatively simple economic situations, those which approximate most closely the theoretical abstract generalization that economists can make in a field which has been long threshed over and on which I would have no hesitation in saying that is just some of the ten commandments of economics, some of the axioms of it that everybody agrees on. Now, to say specifically that there was consensus on a situation which is as intricate as the one which was stated here, I should hesitate to say that there is, because economists have a very considerable capacity for plausible disagreement with each other, or to say it other ways, on a complicated case doctors and competent doctors do disagree, so I shouldn't want professionally to be committed or to try and commit my professional brethren to consensus.

Mr. MacIntyre: If Your Honor please, under

1938 those circumstances we will withdraw the question.

Trial Examiner Norwood: We will have a five minutes' recess.

(There was a short recess taken.)

Mr. Stewart: May I inquire, Mr. Examiner, as to the state of the record as to the last question and answer and your ruling, if any, on the request of counsel?

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Trial Examiner Norwood: Read from the last answer, if there is anything on the record.

Mr. MacIntyre: Let us have the last question and, if so, any answer to it.

Mr. Stewart: Yes, that is right.

Trial Examiner Norwood: Well, we know there is a question and answer on record, and the matter was that the question was requested to be withdrawn.

Mr. Stewart: Well, the point that I make, of course, is that the question was answered, and, therefore, it could not be withdrawn.

Trial Examiner Norwood: Read the record since the last answer, please, sir. Let us see what you have there.

(Record read.)

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: May we have the question read so we know what the—

Trial Examiner Norwood: Well, you can't with-
1939 draw your question after the answer has been made. Proceed.

By Mr. MacIntyre:

Q. Dr. Nourse, suppose you assume that the delivered cost to a buyer of a standardized commodity is identical when figured from each of a number of competing sellers who are variously located freightwise, with reference to the buyer's destination, what is your opinion to the effect that the purchaser under those conditions and under competitive conditions may normally expect as to the identity or uniformity of prices as quoted to him by various sellers for future sales?

Mr. Stewart: I submit, Mr. Examiner, that question is self-contradictory and meaningless.

Trial Examiner Norwood: Read it.

(Question read.)

Mr. MacIntyre: In that question change "to the effect" to read "as to whether the purchaser, under those conditions, may normally expect that the delivered cost to him will be identical as quoted by a number of sellers for future sales."

Trial Examiner Norwood: Do you understand the question, Mr. Nourse?

The Witness: No, I do not.

Trial Examiner Norwood: I think counsel can reframe that question and make it clearer.

1940 By Mr. MacIntyre:

Q. What is your opinion as to whether a purchaser may expect normally that the delivered cost to him as quoted on future sales, or for future sales, by a number of sellers who are located at different places variously freightwise from his destination—

Mr. MacIntyre: Read the question.

(Question read.)

By Mr. MacIntyre:

Q. —will be identical or uniform as to all sellers quoting?

A. No. My answer would be that a purchaser would not expect to find that situation.

Q. Do you have knowledge of any economic theory which would lead any purchaser to expect such?

A. No. I should say not, that your theory, as far as theory can proceed, it is along lines of a competitive fluid adjustment type of relationship between different suppliers in a market. Now, there are—that would result in differences of delivered cost, under the circumstances which you have indicated. It seems to me it would then be beyond the realm of your ordinary theory and into the realm of what I have referred to here before as the strategy of given producers, or groups of producers.

Mr. MacIntyre: I believe that is all, Doctor.

1941 Thank you. The gentleman may want to cross-examine.

Trial Examiner Norwood: Is there any cross-examination?

Mr. Stewart: Well, I think we are trying to decide.

Mr. Gilpatric: I would like to ask, in accordance with what I understand to be in other cases, we have a right to defer our cross-examination.

Trial Examiner Norwood: To do what?

1943 Trial Examiner Norwood: The hearing will come
1944 to order.

Now, let the counsel for the Commission put on another witness and give the counsel for the respondents until reconvening after lunch to cross-examine this witness.

Mr. Stewart: We appreciate that, sir.

Trial Examiner Norwood: I think finally it might not

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be justified. Under the circumstances it would be the considerate thing to do.

Off the record.

(Discussion off the record.)

(Witness temporarily excused.)

Trial Examiner Norwood: Call your witness.

Mr. MacIntyre: Call as the next witness at the instance of the Commission Mr. Walter Mitchell.

Trial Examiner Norwood: You have your subpoena with you?

(The witness handed a document to the Trial Examiner.)

WALTER MITCHELL, JR., was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Trial Examiner Norwood: Proceed.

Direct Examination by Mr. MacIntyre.

1945 Q. Mr. Mitchell, what is your business or occupation?

A. Head of the statistical department of Dun and Bradstreet, Inc., New York.

Q. How long have you been engaged in that position?

A. Six years.

Q. Have you since you have been engaged in that position had any occasion to make any study of any of the production, sales, and shipments made by rigid steel conduit manufacturers?

A. Yes, sir. We compiled monthly statistics on sales for that industry.

Q. How did it come about that you undertook to compile any statistics for that industry?

A. Members of the industry got in touch with us asking if we could undertake such a contract.

Q. You did it, then, on a contract basis for members of the industry?

A. That is right.

Q. And when did they get in touch with you asking that you do it on a contract basis?

A. I think it was about July, 1940. Our first letter to

the members discussing the method of collecting these statistics was sent out June 27, 1940.

Q. How soon before that were you approached by members of the industry to ask you to do that?

1946 A. I do not recollect exactly, but I think that letter was sent out within a week or two after we were approached.

Q. Were you approached a week or so in advance of the date of that letter, which is what?

A. June 27, 1940.

Q. And can you give us the names of the parties that approached you?

A. I do not recollect that, and I do not think I have it here. I have the names of the members of the industry with whom we made this arrangement.

Q. Specify the names of those as far as you can at this time.

A. I have supplied that list of information to the Commission in the form of a letter, which I believe will be found in the Commission's files.

Trial Examiner Norwood: Off the record a minute.

(Discussion off the record.)

Trial Examiner Norwood: Back on the record.

By Mr. MacIntyre:

Q. I show you a letter dated February 20, 1941. Is that the letter to which you make reference?

A. No, this is not the correct letter. This relates to another type of service rendered to fewer members of the industry.

Q. Do you have any record from which you could

1947 refresh your memory as to the names of those parties?

A. I thought I had it here.

Yes, I have here the list. Shall I read it?

Q. Will you specify for the record what rigid steel conduit manufacturers are here involved?

A. Youngstown Sheet & Tube Company, Walker Brothers, Triangle Conduit & Cable, the Steelduct Company, National Electric Products Corporation, Clayton-Mark & Company, Garland Manufacturing Company, Fretz-Moon Tube Company, Enameled Metals Company, Cohoes Rolling Mill Company, Spang-Chalfant, Inc., General Electric Company.

Q. Does that list include the Laclede Steel?

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A. It does not.
Q. Steelduct Company?
A. Yes.
Q. Clifton Conduit Company?
A. It does not.
Q. What did you do after you were approached then by these people and asked to make up reports on the statistics for them?
A. Considerable time elapsed in the course of conferences and correspondence in adapting the questionnaire form to the actual needs of the industry, that is, the question of terminology, uniformity of reporting, in order to obtain accurate and comparable statistics.
1948 Q. What was done in order to arrive at such determination?
A. It was a matter of checking whether, we will say, "sales" meant the same thing to every member of the industry, whether "shipments" meant the same thing as "sales," and such types of technical questions.
Q. Did you have discussions with members of the industry on that?
A. We did.
Q. In meetings with them?
A. Some in meetings, some in personal and telephone discussions.
Q. After you arrived at those determinations you secured statistics from the various members of the industry?
A. That is right.
Q. Compiled it?
A. Correct.
Q. And disseminated it to the members of the rigid steel conduit industry?
A. That is right. The totals went to them, but not the individual companies' figures.
Q. And you sent this information to them pursuant to your arrangement with them?
A. That is correct.
Mr. MacIntyre: I would like these two marked as separate exhibits.
1949 (The documents referred to were marked for identification "Commission's Exhibits Nos. 712 and 713.")

By Mr. MacIntyre:

Q. Mr. Mitchell, I show you Commission's Exhibit 712. Will you please tell us what that is, if you know?

Trial Examiner Norwood: For identification.

Mr. MacIntyre: Yes.

A. This, I believe, is a detached sheet from a bulletin dispatched to the members of the industry summarizing the sales figures for a four-year period from 1937 to 1940.

By Mr. MacIntyre:

Q. Showing figures—

A. Showing tonnage of black enameled, galvanized, and total conduit sold during those several months in those years.

Q. And where did you get the information upon which you based that compilation?

A. The latter part of it was collected by our own organization in the manner just described.

Q. That is, from the members of the industry?

A. From the individual members of the industry.

The earlier part was transcribed from files loaned to us from the files of the previous association in that industry.

Q. And who loaned them to you?

1950 A. They were loaned to us by a storage company on the request of Major Quinn, of Enameled Metals Company, who, I believe, held the warehouse receipt.

Q. And as a part of the records of the Rigid Steel Conduit Association?

A. Those were in the records of the Rigid Steel Conduit Association.

Q. Was the information on which this compilation is based reported to you as being the totals of all sales made by the industry for the period indicated?

A. No. It closely approaches that total. The coverage is over 95 percent of the industry.

Q. But did it include in that 95 percent all sales made by the companies whose names you have just read off to us?

A. I believe so.

Q. Now, Mr. Mitchell, I show you Commission's Exhibit, for identification, 713. Tell us what that is, if you know.

A. This I believe to be a detached sheet from a bulletin supplied to the members of the industry, in which the tonnage figures of Exhibit 712 have been converted to a fixed base index. The base period of that index is the 3 years 1937, 1938, and 1939, during which the average monthly shipments are equated to 100. From that point all monthly shipment figures during the four-year period shown here are individually related to that 100 base.

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1951 Q. And bear a percentage relationship to it as indicated by them, either above or below or at the same level?

A. That is correct.

Mr. MacIntyre: Mark this as the next exhibit for identification.

(The document referred to was marked for identification "Commission's Exhibit No. 714.")

By Mr. MacIntyre:

Q. Mr. Mitchell, I show you Commission's Exhibit, for identification, 714 and ask you to state what that is.

A. This is a letter written to Mr. MacIntyre in accord with his request listing the names of those manufacturers in this industry who had asked us to make specific reports on the status of specific construction jobs scattered over the country.

Q. Did you undertake to make investigations as they had requested on any particular jobs?

A. We did. We investigated a substantial number of construction projects.

Q. And did they pay you for that?

A. They paid us on a basis of—unit basis, so much per investigation.

Q. Will you specify for the record the names of those people who made that arrangement with you at that time?

A. Those names, as contained in this letter, are 1952 Youngstown Sheet & Tube Company, Walker Brothers, Triangle Conduit & Cable Company, Steelduct Company, General Electric Company, Fretz-Moon Company, Enameled Metals Company, Cohoes Rolling Mill Company, and Spang-Chalfant, Inc.

Q. And you undertook that work beginning when?

A. The first information request forms were mailed to industry members on December 17, 1940.

Q. And you mailed others to them after that; is that correct?

A. No. These were blank forms on which any contracting member of the industry could send us the information of a construction job, its location, architect, engineer, and other necessary information on which to pursue our investigation.

Q. And you undertook the first investigation during December, 1940?

A. The first investigations occurred during December, 1940.

Q. Did you handle some subsequent to that date also?

A. They were handled from that period through August, 1941.

Q. And when you secured the information which was requested on the forms sent to you by any one of these subscribing rigid steel conduit manufacturers, what did you do with the information?

A. The information was returned to that subscriber, specifying whether such a job was in existence as the
1953 one described in the form, whether the contractor and architect were correctly stated, whether the value of the job was correctly stated.

Q. As to conduit?

A. As to total value of construction and as to conduit construction.

Q. As to the number of feet or tons of conduit of a particular type used on the job?

A. Yes. The character of the information shows specifically copies of the forms which have already been supplied to the Commission at the time the job was undertaken.

Q. And did you also report to such member the names of any other manufacturers who had contracts for furnishing any conduit on the same job?

A. If I rightly understand your question, in the instance where more than one manufacturer inquired about the same job, they were both supplied with information about that job.

Q. But as to either one of them you informed—that is, to each one of them you informed them as to what manufacturers, if any, had made any commitments for furnishing conduit on the job in question; is that correct?

A. No. We simply informed each member that some other member was inquiring about that job. There was at one time a request, of which I informed the Commission, for specific names of others inquiring on the same job,
1954 which we declined to grant without specific written permission from each member of the industry that his name be so used.

Q. Well, now, you did inform, though, the inquiring members as to whether or not conduit was being supplied on a particular job by any one other than the inquiring member?

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Mr. Stewart: I object. First, the question is leading, and, second, the witness has already said they did not.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: It is slightly leading. Objection sustained.

By Mr. MacIntyre:

Q. Can you tell us whether or not that in your reports to the inquiring members you informed them as to commitments by other members for rigid steel conduit on any particular job?

A. We could not inform a member as to commitments by another manufacturer. His commitments are unknown to us until he inquires specifically of us.

Trial Examiner Norwood: But you have already stated that you would report to the inquirer the fact that some other member of the industry had a contract.

Mr. Stewart: No; that he had made an inquiry, as I understand it, about the same job without naming the manufacturer.

1955 The Witness: That is correct.

Trial Examiner Norwood: Thank you.

The Witness: That is slightly different from Mr. MacIntyre's question, however.

By Mr. MacIntyre:

Q. Did you inform the inquiring member as to whether or not contracts for conduit or commitments for furnishing conduit on the same job in question had been made by some other member or some other manufacturer of rigid steel conduit?

A. See if I can make clear the way the thing works.

We could not inform the member of a commitment by another member of the industry unless the other member of the industry inquired of us specifically about that job. In that instance, I have already answered that we informed the inquiring member that someone else had also inquired about the same job.

Q. Well, did you go any further than letting him know that some other member had inquired about the job?

A. No. That is as far as the reply went.

Q. Is it your testimony that you did not inform the inquiring member as to whether or not that a specific quantity of conduit, or any part of it which had been

reported to you as being required on a specific job, had been ordered or was offered to be furnished by some other manufacturer of conduit?

A. We could not until we received a specific in-
1956 quiry. We knew nothing of the commitments until we received the inquiries.

Q. Didn't you make efforts, through your field agents to find out whether or not that on a specific job commitments had been made by any manufacturer of rigid steel conduit to furnish conduit on the job?

A. No, we could not do that.

Well, perhaps we could have done it. We were not asked to do it. We were not asked to find out about commitments.

Now, if you are referring to the conduit actually in use on the job, that is a variation of what I have already answered, namely, we would report that "another brand" was already in use on that job.

Q. That was the point of all of these questions, Mr. Mitchell, as to whether or not you did—

A. But that had nothing to do with the commitment. That was the actual use of conduit on the job.

Trial Examiner Norwood: Did you report any further particulars?

The Witness: The nature of the particulars reported appears on the forms which we used, and which had been filed with the Commission, and I have copies here. I can read them if you care to have them in the record.

By Mr. MacIntyre:

1957 Q. Well, didn't you, when you made your reports, point out that conduit was being furnished on the job by someone else? Didn't you report how many tons that was involved in the commitment and when the commitment was made?

Mr. Stewart: I am going to raise the question at this point that obviously the question is directed at written report, and the written report is the best evidence. Let us put it in the record, not have all these questions about it. The witness has already said he has the forms there and can furnish them.

Trial Examiner Norwood: If he is questioning him about some particular report, the report itself would be the best evidence of that; but about his arrangement, his method, and what he generally did under the circumstances is not in writing, I suppose.

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Mr. Stewart: But as I understand the question, it is directed at "What did you report in a given instance?" As I understand the witness, he said on several occasions that the report was in writing, and he has the form there in his hand. Now, I submit that the form should be put in evidence and there should not be oral testimony.

Trial Examiner Norwood: Well, I will let him answer this question.

Mr. MacIntyre: May we have the last question, please?

1958 Trial Examiner Norwood: Objection overruled. Answer the question.

The Witness: Your Honor, I have here a blank form. The members of the industry were specifically informed when we undertook these investigations that all forms and all arrangements were to be submitted to the Federal Trade Commission before we undertook the investigations and that files of investigation reports would be available to the Commission on request. That can be had in accord with our original statement and agreement.

Mr. MacIntyre: Mark this for identification.

(The document referred to was marked for identification "Commission's Exhibit No. 715.")

By Mr. MacIntyre:

Q. The form to which you have been making reference, is that the document marked for identification as Commission's Exhibit 715?

A. Yes, sir. That is the form which was furnished to the members of the industry, the subscribing members, in response to specific inquiries.

Q. Filled out with appropriate information as to any particular job?

A. That is correct; with the obtainable information, which was by no means always complete, obviously.

Q. But you made it complete in so far, as you could?

1959 A. That is correct.

Mr. MacIntyre: If your Honor please, I offer into evidence at this time Commission's Exhibit, for identification, 715.

Trial Examiner Norwood: Any objections?

Mr. Stewart: I have not seen it.

(Mr. MacIntyre hands the exhibit to Mr. Stewart.)

Mr. Stewart: No objection.

Trial Examiner Norwood: Received as marked.

COMMISSION'S EXHIBIT NO. 715 was offered and received in evidence.

Mr. MacIntyre: I also offer at this time into evidence Commission's Exhibits, for identification, 712 and 713, 712 as the statistical showing of what conduit in terms of tons was sold, both as to galvanized and enameled, each month during 1937, each month during 1938, and each month during 1939, and for the first 11 months of 1940, by each of those rigid steel conduit manufacturers named by the witness in his testimony which had to do with Commission's Exhibit 712.

Mr. Stewart: Well, now, while we are on 712, my understanding is that the witness did not undertake to vouch as to who made the reports. He said it represented 95 per cent of the manufacturers, but I did not understand that Mr. Mitchell undertook to say those figures are cor-
1960 rect or who submitted them.

Mr. MacIntyre: He also testified that it included all of those that he had named, and possibly others, but he did state that, and without any qualification, that it included all of those that he had named.

Mr. Stewart: Well, I should like to hear that. I did not so understand it.

By Mr. MacIntyre:

Q. Isn't that true, Mr. Mitchell?

A. I stated that during the period of 1940, for which we collected the figures, it includes all of the reporting companies named in my letter. For the prior period, as near as we could ascertain from the files loaned to us, it includes the same companies, but we obviously cannot certify to the workmanship of a prior statistical agency.

Mr. Robison: May I ask a question of the witness, which I think may tend to clear up some possible confusion?

Trial Examiner Norwood: Certainly.

By Mr. Robison:

Q. Mr. Mitchell, in referring to this compilation now offered, which has been marked Exhibit No. 712, you referred to it as reflecting tonnage sold of the commodity mentioned. In so stating were you drawing any distinction between sales and shipments?

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A. We found that the idea of a sale in this in-
1961 dustry appeared to be a completed sale; that is to say, a shipment.

Q. So that—

A. The incompleted sale—

Q. In your testimony with reference to this exhibit you have used the word "sale" as the equivalent of "shipment" with respect to any month reflected in the statement?

A. For practical purposes; that is correct.

Mr. Robison: I thought there was a possible confusion there, as Mr. MacIntyre in his offer referred to it as showing sales.

Trial Examiner Norwood: Yes.

Mr. Robison: On the understanding that Mr. MacIntyre uses the term in the same sense that the witness says he does, I will have no objection to that.

Mr. Stewart: I was going to suggest, it seems to me the obvious objection to it is that the witness has admitted that he does not undertake to vouch for the accuracy of the figures for the years prior to 1940. Now, that document may be right or wrong to that extent, I suppose. It can come in but that is what it amounts to.

Mr. Peyser: In behalf of the M. B. Austin Company I object to the exhibits on the ground that the witness has not testified that M. B. Austin sought any information or any of these reports; so as far as that respondent is concerned, they are irrelevant and immaterial.

1962 Trial Examiner Norwood: Any further objection?

Mr. Stewart: We are just on 712, as I understand it.

Mr. MacIntyre: Both. One is based on the other.

Mr. Stewart: Oh, I see.

Mr. Gilpatric: No further objection.

Mr. MacIntyre: If Your Honor please, on this objection raised by Mr. Stewart, I can say that I am not only offering these as records of these respondents as reporting to this witness and as compiled by him under a contract with him to compile them and report to them, but I am also offering them as admissions by the respondents as they had written and filed among their papers and which they turned over to this witness pursuant to their contract with him to compile for them, and having been compiled by him in this form, and, as just testified, that Lawrence R. Quinn, one of the respondents here, who held the warehouse receipt

and thereby had custody over the files of the Rigid Steel Conduit Association and at the request of Mr. Quinn he went through the files of that Association and took the information out of the files as it related to these respondents, compiled it, and here it is. If there is any mistake, any errors, they are errors made by the respondents in their records.

We do not know anything about them. So far as we know, they are correct, and we take them as being
1963 correct until respondents prove that they made errors in their records from which these were taken.

Trial Examiner Norwood: Now, was that date covering the time prior to 1940 to which counsel objects—

Mr. Stewart: Yes.

Trial Examiner Norwood: Was that furnished to you by these respondents?

Mr. MacIntyre: That is the information I was just referring to.

Trial Examiner Norwood: I am asking the witness a question.

The Witness: Your Honor, that information was extracted from reports in the files of the Rigid Steel Conduit Association, not by me personally, but by one of my research assistants who was sent to the warehouse to dig through and find the appropriate papers and compile the data. It is only presented, as I have stated, correct to the best of our knowledge and belief, from the reports we had available.

Trial Examiner Norwood: Did you verify the tabulations with these reports?

The Witness: The reports in the Association files were the source of this earlier retrospect material.

Trial Examiner Norwood: Yes.

By Mr. Stewart:

Q. But may I also ask, they are obviously incom-
1964 plete, are they not?

A. They are, to the best of our belief, incomplete in the same degree as our present figures?

Mr. Robison: Mr. Examiner, provided it may be understood that if the respondents shall find occasion to present figures from the same source, going back to an earlier period than that covered by the statement submitted by this witness, in case they shall find occasion to do so, I shall

have no objection on the ground of the source of the material of this witness' statement.

Mr. MacIntyre: I, frankly, do not know what that statement means.

I will say this, that I have no objection to any offer of the respondents coming into this and being tied with this if it is necessary to explain or show the correctness or incorrectness of this from their records, if they properly prove it.

Trial Examiner Norwood: If the information is relevant, you have no objection to it.

Mr. MacIntyre: If it is necessary, and if it is a part of this, to explain this, or to show the incorrectness of it, if they properly prove the information that is so brought in.

Trial Examiner Norwood: And also that the counsel without any understanding about it would have a
1965 right to give additional information on this particular question here, to add to, or to show the correctness or incorrectness of these statistics, or to offer anything else along the line that is material and relevant.

Mr. Robison: The point I was making is that in doing so we may not wish to be confined to the limited number of years to which this witness has so far confined himself, and if we find occasion to go to an earlier period, we do not want to be met with the proposition that a source of the same nature cannot be used by us.

Trial Examiner Norwood: I can see nothing that will confine counsel to that. You can complete the picture.

Mr. Robison: The point Mr. McIntyre seems to be making as I understand it, is the evidence may be sauce for the goose and not sauce for the gander. Now, I am in the position of the gander, or will be placed in the position of the gander, and I want to have the same privilege concerning the introduction of evidence from the same source, but for an earlier period, as Mr. MacIntyre.

Trial Examiner Norwood: I shall overrule the objections and receive the exhibits on those grounds.

Mr. Peyser: Your Honor, before I go any further, I want to voice an objection to Mr. MacIntyre's previous remark in reference to the Rigid Steel Conduit Association with respect to the Respondent M. B. Austin on
1966 the ground that it has not been shown at any time in this proceeding that it was a member of that Association.

Trial Examiner Norwood: The objection is overruled and the exhibits are received as marked.

COMMISSION'S EXHIBITS NOS. 712 and 713, were offered and received in evidence.

Trial Examiner Norwood: Those exhibits are received with the understanding—this is the complete understanding, that respondents will have the right and do have the right to complete the picture with respect to these statistics.

Mr. MacIntyre: In so far as the picture is not now complete.

Trial Examiner Norwood: In so far as it is relevant for them to do so.

Mr. MacIntyre: And it is necessary to explain or to fill the picture out.

Is that the understanding?

Br. Gilpatric: Who will be the judge of that?

Mr. MacIntyre: I just want to know what the understanding is if I am to be a party to it.

Trial Examiner Norwood: I think I have stated the understanding.

Go ahead.

Mr. MacIntyre: I just want to be clear on the 1967 record as to what sort of understanding I may be considered to be a party to.

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Mr. Mitchell, I am showing you Commission's Exhibit 712 and 713, and I again ask you to explain the use of the word "sales" as it appears on those documents.

A. In order to be absolutely certain, I would need to review some correspondence which we had at an earlier stage in endeavoring to obtain an understanding of the industry's use of the terms "sales" and "shipments," but it is my rather clear recollection that we found a general agreement among the members that the word "sales" meant a completed shipment, and that the use of the word "sales" in the term of commitments by a customer to buy was in this industry covered by the phrase "contracts".

Q. And did sales, as you have used it there, then include disposition of the goods to a buyer, or to buyers?

Mr. Stewart: Just a moment, please. I should like to know what counsel means by "disposition of the goods to buyers".

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Trial Examiner Norwood: I think that is fairly clear.

Mr. Stewart: Mr. Examiner, frankly I do not know what it means.

1968 Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: You mean deliver them to the buyer, Mr. MacIntyre?

Mr. MacIntyre: The witness has said "completed shipment." I am now asking him if he means by that a disposition of the goods to a buyer or buyers.

Mr. Stewart: He does not know what you mean.

The Witness: Your Honor, I do not know what he means. That is not a familiar commercial term.

Trial Examiner Norwood: The witness does not understand it.

By Mr. MacIntyre:

Q. When you used the term "completed shipment," did you mean by that a shipment from the seller to the buyer in a sale to the buyer?

A. That is correct. The minor source of possible confusion in that respect is the question of shipment on consignment, and the disposition of that portion of the business is clearly shown by the instructions on the reporting forms with respect to consignments, if you had in mind consignments.

Q. Well, you did not include consignments in this word "sales"; is that correct?

A. Let me get this form here. It has been a long time since I went through all the technical details of the

1969 terminology of the industry.

The phrase in the form which covers that point in asking the members to report is as follows:

"Include all orders billed and shipped, also consignment customers sales reported to you during each month."

Q. So the word "sales" as used in Commission's Exhibits 712 and 713 includes such transactions?

A. Yes—

Mr. Stewart: I object to that because that is not a correct statement of what the witness said. He said exactly what the form provides. Consignment sales are not included within "sales," except in the manner stated in the form.

Trial Examiner Norwood: Read the question.

The Witness: Your Honor, a shipment to a consignment account is not considered a sale until that consignee sells the goods to a bona fide customer.

Mr. MacIntyre: Now, will you please read the question that I asked the witness which is objected to?

Trial Examiner Norwood: Read the question.

Mr. Stewart: I withdraw the objection now. It is cleared up.

Mr. MacIntyre: Let us have the question read back.

(Question read.)

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

1970 Mr. MacIntyre: That is all of the witness.

Trial Examiner Norwood: Cross-examine.

Cross-Examination by Mr. Stewart.

Q. Mr. Mitchell, the arrangement for the investigation by your concern of the specific building contracts was a matter for each individual manufacturer to make, was it not?

Mr. MacIntyre: Now, I object to that question. It calls for a conclusion, and not what the facts were. I asked this man as to the arrangements which were made; not what they considered them to be, but what they are.

Mr. Stewart: I am asking what the fact was.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: You can tell us what you understood the arrangement to be.

Mr. Stewart: What I am asking is what was the fact. There was no understanding. I know what the fact is, and I am asking him what the fact is.

By Mr. Stewart:

Q. Is it not a fact, Mr. Mitchell—

Trial Examiner Norwood: I think he may tell us just as I said. He can tell us what he understood.

Now, has he answered that question?

The Witness: No.

1971 Trial Examiner Norwood: I will overrule the objection and instruct the witness to give us what he understands.

The Witness: Our arrangement was a contract with

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each individual member of the industry who wished to avail himself of this type of service.

By Mr. Stewart:

Q. Now, was that contract not made pursuant to correspondence, or at least one letter in which you outlined in plain terms the basis upon which you would accept the undertaking with regard to not only specific building contracts but any other duties you would perform?

A. I believe there is in the Commission's files a copy of the letter in which we describe the plan of operation to the members of the industry.

Q. Is it not a fact that you took up with the Commission the matters involved in this particular inquiry relating to specific building contracts and all other matters involved in this contract with the members?

A. We specifically reported to the Commission our intention to undertake that investigation and supply the Commission with copies of forms and other data.

Q. Now, what was the purpose in investigating specific building job contracts?

Mr. MacIntyre: Now—

Q. What was your purpose?

1972 Mr. MacIntyre: I object unless it is shown in the witness' answer what he did, and not what he understood the purpose to be, but what he was seeking to accomplish.

Mr. Stewart: All right. I will withdraw the question.

Trial Examiner Norwood: Go ahead.

By Mr. Stewart:

Q. Mr. Mitchell, what did Dun and Bradstreet do with regard to the specific building job contracts?

A. We set up forms for our reporters to follow in investigating. The questions on those forms were of such a nature as to show whether the job in fact existed; that is to say, whether a job reported to a manufacturer by a contractor was a bona fide existing construction project.

Q. Now, just at that point, let me ask, why was that question put on your form?

A. The statement was made to us, and we found it to be true in a few instances, that a contractor—

1973 A. (Continuing.) —had requested a commitment for conduit on a job which in fact did not exist.

By Mr. Stewart:

Q. Now, what other feature was covered in your form?

A. The size and character of the construction job was covered.

Q. Now, will you explain the reason for that? Excuse me.

1974 Will you explain the reason for your endeavoring to ascertain those facts in connection with a specific building job contract?

A. We found in a number of instances that the contractor had asked for a commitment for conduit considerably in excess of the actual amount needed to complete the job. This was in accord with an allegation made by subscribing members of the industry. Obviously these are minority instances in accord with our general finding that most of the world is honest.

Q. But, as I understand, the purpose of your inquiry was to ascertain whether or not there was any overreaching or fraud or matters of that nature in connection with a specific job contract?

Mr. MacIntyre: Mr. Stewart is deciding this case in this particular question, as to whether fraud is involved. I object.

Trial Examiner Norwood: If counsel has an objection, will he state it.

Mr. MacIntyre: Well, I object, because it is an attempt to decide vital issues of law in the case in a single question.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Answer the question.

The Witness: Your Honor, we would prefer to

1975 answer it in the positive, by saying that it was our purpose to ascertain whether the job was genuine and required the specified amount of conduit.

Mr. Stewart: Very well.

By Mr. Stewart:

Q. Now, with regard to these tonnage reports about which you have testified, was that a form which you prepared and submitted to the Commission?

A. The form in that case was submitted to the Commission after we had reached what we believed was a fairly workable technical statement of the reporting form, and at

a later date a revised form was submitted to the Commission after we found certain sources of errors in the initial form.

Q. Now, do you have that form in your files?

A. Yes, I have it here.

Q. Has that been offered in evidence?

A. The reporting form? I don't think—the tonnage reporting form on which the individual member returned his report of tonnage, I think that has not been placed in evidence.

Q. Well, all right.

In any event, that information also was for the benefit of the individual member, was it not, who had contracted with you?

Trial Examiner Norwood: Will you answer that question?

1976 The Witness: Your Honor, I do not quite understand the question.

Mr. Stewart: Well, now, I would like to ask if counsel for the Commission, in view of the fact that he has inquired about the subject, will put this in evidence as part of his case so that we have it; otherwise, we shall ask the witness to read it in, because I can't put it in as part of my cross-examination.

Mr. King: I don't think you have to ask him.

Mr. Stewart: Well, I am not going to argue about it.

Trial Examiner Norwood: If counsel is going to bring in anything about the paper, and if the Commission's counsel does not adopt it, he may offer it in connection with the cross-examination.

Mr. Stewart: Will you mark it.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

(The document referred to was marked for identification "Respondents' Exhibit No. 22.")

By Mr. Stewart:

Q. I show you the form which is marked Respondents' Exhibit No. 22, and ask you, Mr. Mitchell, if that is not the form which was used by Dun and Bradstreet for reporting the tonnage figures about which Mr. MacIntyre has

1977 inquired? Will you look at this document, please?

A. That is correct. This is the standard monthly form used regularly after the start of the work. In the

beginning it was necessary to accumulate some retrospect figures on the special form, but the wording and general character of it was similar to this one.

Q. Now, was the material which is on the back always on the form?

A. It has been, to the best of my belief, on that form from the first time it was sent out. I am not sure it was on the earlier form.

Mr. Stewart: I offer that in evidence as part of my cross-examination.

Mr. MacIntyre: I offer no objection other than that it is a matter of duplication as to the parties.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBIT NO. 22 was offered and received in evidence.

The Witness: I should make clear, perhaps, that this form—these two forms are no longer in use with respect to the reporting on specific construction jobs. They have been discontinued.

By Mr. Stewart:

Q. Now, when you use the language "these forms" 1978 are you referring to two forms which you hold in your hand, neither of which is in evidence?

A. That is correct—one of them is in evidence.

Q. One of them is in evidence as Exhibit—

A. 715.

Q. —715, sir.

May I ask, Mr. Mitchell, as to whether or not you filed this data which you acquired from the Rigid Steel Conduit manufacturers with any other department of the Government?

A. The monthly reports on shipments are furnished to the United States Department of Commerce. I can give specific names.

Q. If you will, please.

A. They were furnished to the Federal Trade Commission, to the Bureau of Research and Statistics, Office of Production Management, to the Bureau of Foreign and Domestic Commerce, and to the National Electrical Manufacturers Association.

Q. Mr. Mitchell, I should like—I am sorry.

A. I believe they appear in published form in the Survey of Current Business. That was the origin of the re-

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quest from the Department of Commerce, was the Survey of Current Business.

Q. I think it is clear in the record, but just as a matter of precaution, the arrangement for this information is a matter of individual contract between you and the
1979 particular manufacturer, is it not?

A. The—which job are you referring to?

Q. Well, either or both.

A. The arrangement is slightly different in the two jobs. With respect to the checking of individual construction jobs, that is entirely an independent contract between Dun and Bradstreet and the subscriber. With respect to the collection of statistics it is a conditional contract between Dun and Bradstreet and the subscriber, entered into with the understanding that the subscriber contributes his figures only if he is satisfied that a substantial majority of the industry is also cooperating.

Q. You receive your pay, then, from the individual manufacturers?

A. We are paid by the individual manufacturers.

Mr. Stewart: That is all, sir. Thank you.

Trial Examiner Norwood: Any redirect?

Mr. MacIntyre: I have one or two questions.

Redirect Examination by Mr. MacIntyre.

Q. Showing you again, Mr. Mitchell, Commission's Exhibits 712, 713, and 715—strike out the 715. Can you tell me whether or not the date appearing in the lower right corner of each of those sheets, the "1/20/41" is the date of January 20, 1941, on which those were prepared by you?

1980 A. I believe that to be correct, because shortly after that time we issued a printed bulletin in a more final form which also included the December figures, and that printed bulletin I believe to be in the files—copy of it I believe to be in the files of the Commission. This is, at any rate, our customary form of abbreviated date on temporary sheets.

Q. Now, on cross-examination I believe that you told Mr. Stewart, in response to a question of his as to whether you had taken this matter up with the Federal Trade Commission, that you had. Do you recall that question?

A I answered that I had submitted the forms and an

outline of our intention to the Trade Commission at that time.

Q. Now, will you tell me when it was that you furnished this Commission's Exhibit 712, Commission's Exhibit 713, and Commission's Exhibit 715 to any representative of the Commission?

A. Without my files I could not give specific dates. It is my recollection and belief that the earlier forms were sent down at the time that we were negotiating the arrangements to carry on the services. These statistical reports have been sent down on each subsequent occasion in the same mailing—in the same mailing in which they went out to the members of the industry.

Q. Isn't it a fact that you submitted those forms to me in my office on the morning of February 18, 1941, at
1981 10:30 and you stated that you wanted to get them in our hands at that time because you knew that a complaint had been issued against the people for whom you were doing that work?

A. You will find that the earlier submission of the forms took place—I think the earliest submission of the forms on part of this work took place about October, 1940, to Mr. James Horton, Chief Examiner of the Trade Commission, and it is my recollection that at that time we had just become aware of the complaint of the Commission against this industry, and we had not yet undertaken the contract to perform any services for them.

Q. But you knew at the time that you submitted any of this information that a complaint was in the making and outstanding—or outstanding against the industry?

A. We knew, to the best of my belief and recollection, before we undertook the service to the industry that this complaint was in the making.

Q. And for what reason did you submit any of this information to me on February 18, 1941?

A. Assuming that date to be correct, which sounds reasonable, it has been our standard policy with respect to all services rendered to industry to keep all interested Government departments fully informed of the type of work to be undertaken.

Q. Now, you have told Mr. Stewart on cross-exam-
1982 ination as to why—that is, as to the reason why you included in your forms, particularly the one which is evidenced by Commission's Exhibit 715, the questions which appear thereon. Do you recall?

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A. I do.

Q. Isn't it a fact, Mr. Mitchell, that you included those questions on your forms because you were asked to do so by these members in the industry who contracted with you to make these investigations?

A. That is correct. That is necessarily the origin of all such forms.

Q. You didn't include those questions on any of your forms because of any desire on your part or anything else that had prompted you to do it except the questions—the request put to you by the subscriber; is that correct?

A. That is, you might say, practically correct. In a technical sense we have always—offer some alterations of wording because of our experience—previously experience with the other industries, in order to avoid confusion, or in order to avoid an attempt to obtain information which is unobtainable.

Q. But as to substance of the questions, did you include any other than those which were requested by the members that you include?

A. I believe not other than, as I have stated, technical question of identifying the nature of the job which we probably added in the—that is really a technical phase 1983 of the—of the work.

Q. Now, I show you Commission's Exhibit, for identification, 714. I will ask you whether prior to that date that you had informed anybody in the Federal Trade Commission as to the parties for whom you were making these investigations of specific building contracts?

A. I believe that prior to that date we had not given the specific list of names but had only dispatched the forms to the Trade Commission.

Q. In other words, prior to February 20, 1941, you had not informed anyone at the Federal Trade Commission as to who these manufacturers were that you were making investigations for on specific building contracts; is that correct?

A. That is correct. We have not informed the Trade Commission of the specific names of many of our subscribers to specific services, but do so on request.

Q. One further question. Have you ever reported to any of these members of the rigid steel conduit industry

with whom you had contracts that you had discovered fraud in any contract that you had investigated?

A. We do not express opinions in our reports. That is standard throughout all of our work.

Q. Well, have you ever—

Mr. Stewart: Now, wait a minute.

A. We simply show the facts.

1984 By Mr. MacIntyre:

Q. Well, have you ever stated in any report to any member of this industry that you had discovered fraud in any contract that you had investigated?

A. No. The report does not take that form.

Mr. MacIntyre: That is all.

Mr. Stewart: Just one more question.

Recross Examination by Mr. Stewart.

Q. You have reported that where a contractor asks for a commitment on a contract on a job you have found that it did not exist?

A. We found that it did not exist. We have also found discrepancies.

Q. One more question. In regard to your report to the Federal Trade Commission in this matter I take it you did inform them that it was for the rigid steel conduit matter?

Mr. MacIntyre: Mr. Stewart is doing a lot more than taking that. He is taking a little bit more maybe in his question than he should by reason of its leading character.

Mr. Stewart: The witness is your witness and I am asking on cross-examination—

Trial Examiner Norwood: Read the question.

Objection overruled.

1985 Mr. Stewart: Well, he went into it.

A. I don't quite understand the question.

(Question read.)

By Mr. Stewart:

Q. I take it that Mr. MacIntyre was inquiring as to whether you left the Commission in the dark as to whom you were doing the work for, and I would like to know whether you did.

A. Now, then, that could not be possible because the names in the forms submitted showed the name and character of the industry.

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Mr. Stewart: That is all.
Trial Examiner Norwood: Off the record.
(Discussion off the record.)
Trial Examiner Norwood: Recess until 1:30.
Let the record show that the witness is discharged.
(Witness excused.)

(Whereupon, at 12:55 o'clock p. m., a recess was taken until 1:30 o'clock p. m. of the same day.)

1986 **Afternoon Session.**

1:30 P. M.

(Documents were thereupon marked for identification "Commission's Exhibits Nos. 716 to 737," inclusive.)
Trial Examiner Norwood: The hearing will come to order.
Proceed.
Mr. MacIntyre: We call as the next witness, at the instance of the Commission, Mr. Custer.

A. B. CUSTER was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Direct Examination by Mr. MacIntyre.

Q. You are the same Mr. A. B. Custer who has testified in this proceeding previously; is that correct?
A. Yes, sir.
Q. And have you brought with you, Mr. Custer, any additional tabulations of bids submitted to the Bureau of Supplies and Accounts of the Navy Department?
A. I have brought with me and am prepared to submit an abstract of the bids—the same bids that were presented before this abstract being in an itemized unit price form.
Q. Instead of the—
1987 A. Instead of the total—
Q. —extension total such as was shown on the other; is that correct?
A. That is correct.
Q. They are otherwise the same—that is, a showing of the same bid?

A. Same bids, same prices in just a little different form, with the unit prices added.

Q. And you say you have brought tabulations of that nature with you. Will you look at Commission's Exhibits 716 to 737, inclusive, and tell me whether or not those are the tabulations which you just said you brought with you of that character?

A. These are the tabulations.

Q. Well, they show for each lot of each schedule the unit price bids which are shown in extension totals in the tabulations evidenced by Commission's Exhibits 334 to and including Commission's Exhibit 364; is that correct?

A. That is correct.

Mr. MacIntyre: If Your Honor please, I now offer into evidence Commission's Exhibits, for identification, 716 to 737, inclusive.

Mr. Stewart: Three, is it?

Trial Examiner Norwood: 700.

Mr. MacIntyre: 716 to 737, inclusive, and at the
1988 same time tender to counsel for the respondents the original bids upon which these tabulations are based for their use in the cross-examination of this witness.

May I add that my reason for offering these tabulations of those bids, tabulations which we have heretofore offered and had received in evidence, to offer them at this time in unit prices, is because they are facts disclosed through the tabulation of the unit prices broken down to the units that are not disclosed when only the total is shown in the tabulation.

Trial Examiner Norwood: Any objection.

Now, counsel proffers all the data on which the tabulations are based?

Mr. MacIntyre: I do. It is here on the table and counsel may use it in cross-examination of the witness.

(Discussion off the record.)

By Mr. Stewart:

Q. As I understand it, Mr. Custer, these Exhibits from 716 to 737, inclusive, are merely amplifications in detail of the exhibits which were mentioned in Mr. MacIntyre's question; is that correct?

A. That is correct.

Q. I see. And the supporting data which is before you

on the table, is that in your custody or where it will be available to us in case we desire to check this data—

1989 A. Yes, sir.

Q. —or require further information regarding it?

A. At any time.

Q. And you have, of course, made a true and correct transcript from these documents of this data on these exhibits?

A. That is correct.

Mr. Stewart: I have no objection.

Mr. King: I object to the exhibits, if Your Honor please, first, on the ground that they are a duplication of what is already in the rather lengthy record; secondly, because Mr. MacIntyre has spent literally hours of our time showing other bids and other tabulations of bids to witnesses without this detail and asked the witnesses to make certain explanations. Now, at this late date he comes in with a detailed breakdown which might have changed a good many answers of some witnesses, and I think that it is taking an advantage to do this at this time.

Trial Examiner Norwood: Well, on the face of it there it is apparent that those witnesses are respondents or employees of respondents. I think that any new matter there can be explained by them. You have the explanation within easy reach.

Any further objections?

The exhibits are received as marked, Commission's Exhibits 716 to 737, inclusive.

1990 COMMISSION'S EXHIBITS NOS. 716 to 737, inclusive, were offered and received in evidence.

Trial Examiner Norwood: Now, it is understood that the witness will keep these papers together until the respondents have had time to check?

The Witness: Yes, sir.

Mr. MacIntyre: That is, the original of the bids.

Mr. Stewart: Yes, sir.

Trial Examiner Norwood: And they may be obtained at what office now?

The Witness: The Bureau of Supplies and Accounts, Navy Department.

Trial Examiner Norwood: Thank you.

By Mr. MacIntyre:

Q. Mr. Custer, I am calling your attention to a notation in the upper right corner of Commission's Exhibit 716. It is a notion "Baltimore, Md." opposite the word "Bid B," and there is a pencil mark around it with a point on the end of that pencil mark pointing to a space just following the bid price of .2173 just below where "Baltimore, Md." is now written. Can you tell us what the pencil marks mean as well as what the notation "Baltimore, Md." means?

A. Baltimore, Md., means the shipping point
1991 named in the f. o. b. factory bid, or better known as "Bid B." "Baltimore, Md." was just misplaced on the tabulation; should be moved down opposite the price.

Q. Of .2173?

A. Correct.

Q. As indicated that pencil mark?

A. That is the indication—the proper location of the word "Baltimore, Md."

Mr. MacIntyre: That is all for the witness.

Trial Examiner Norwood: Cross-examine.

Mr. Stewart: That is all.

Cross-Examination by Mr. Gilpatric.

Q. Mr. Custer, in the bids which form the basis of the documents which you produced here today, is there customarily set forth terms of payment in addition to the amount which is shown on that schedule?

A. There is a space provided in each invitation for the insertion by the bidder of the discount offered.

Q. Do you know whether those discounts ever differ in a case of different bids?

A. Yes, the discounts do differ widely generally.

Trial Examiner Norwood: Well, are those discounts reflected in the tabulations?

The Witness: Those discounts are not reflected in
1992 the tabulation.

By Mr. Gilpatric:

Q. And they were also not reflected, were they, in Commission's Exhibits 334 through 364? Those are the abstracts you furnished us earlier.

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A. That is correct. These are abstracts of the prices bid only and are not abstracts of discounts in either case.

Trial Examiner Norwood: Well, are they totaled out there so that the differences in discount would make a total different figure for the bid?

The Witness: They are not.

Trial Examiner Norwood: How could you make an award on those without calculating the discount and considering the difference in the discounts?

The Witness: The discounts are evaluated after the evaluation of the unit prices.

By Mr. Gilpatric:

Q. But those exhibits don't reflect that evaluation; do they?

A. They do not.

Q. Now, what about terms of payment? That is, the time after delivery or after billing that the payment for the award, if made, is due? Isn't that shown on the—

A. You mean the period of the discount?

Q. Yes.

1993 A. That is provided for in the space for the discount. It is a standard arrangement, 10 days, 20 days, 30 days. Bidders indicate the discount in any one or all three.

Q. Does it make any difference to the navy which of those periods is taken in awarding the bid?

A. In some cases it does; others it does not, depending on the character of the material, the time required for inspection, the extent of factory inspections, and whether,—if there is reasonable certainty that a payment can be made within the discount period—first period of 10 days.

Q. I am just limiting my question, Mr. Custer, to conduit. I am asking you whether in the case of calls for bids on conduit that consideration makes a difference to you in awarding—making award?

A. The discount would be a factor in making the award on conduit.

Q. And that element—that is, the period of time for payment—is also not shown on those abstracts you have presented?

A. That is correct.

Mr. Gilpatric: That is all I have.

By Mr. King:

Q. Why didn't you show that on those abstracts?

A. It is not customary in our preparation of abstracts to reflect the discounts in the unit prices in an abstract. Those are weighed, evaluated separately.

1994 Trial Examiner Norwood: Well, aren't those awards made on the basis of final costs to the Government?

The Witness: Over the costs; yes, sir.

Trial Examiner Norwood: Then every bid has to be considered with respect to its discount before you can make the award; does it not?

The Witness: That is—the discount is a comparatively simple evaluation. By a glance all discounts may be the same. It is immaterial whether they are reflected in the unit prices or totals; it wouldn't change the overall results.

Trial Examiner Norwood: In cases of the bids shown on those tabulations, are all the discounts the same?

The Witness: I couldn't answer that without reviewing the bids.

Trial Examiner Norwood: If they weren't the same, wouldn't the tabulations show it?

The Witness: Not in this abstract.

Trial Examiner Norwood: Let me see that.

(The witness handed a document to the Examiner.)

Trial Examiner Norwood: Any further questions?

By Mr. Stewart:

Q. Well, Mr. Custer, in determining to whom the bid should be awarded on the competitive basis you would necessarily have to take into consideration the discount feature; wouldn't you?

1995 A. If the discounts varied; yes, sir.

Q. Well, of course, I assumed that.

Mr. Stewart: That is all.

Trial Examiner Norwood: Any redirect?

Mr. MacIntyre: Yes. I have a question.

Trial Examiner Norwood: Is there any further cross-examination?

Mr. Stewart: No, sir.

Trial Examiner Norwood: Go ahead, Mr. MacIntyre.

Redirect Examination by Mr. MacIntyre.

Q. Now, on cross-examination, Mr. Custer, in response to some questions propounded to you by Mr. Gilpatric, you have told him that these do show some factor that is used in evaluating the bid, and for the purpose of determining whether or not an award will be made to one bidder as against another; is that correct?

A. Correct.

Q. And that factor is shown in terms of cents per foot of conduit involved in the bid; is that correct?

A. That is correct.

Q. And that is true of each of these tabulations?

A. Correct.

Q. And it also shows the total of the bid as to any lot—the total of the bid by any bidder as made on any lot 1996 in any one of these schedules on any opening; is that correct?

A. That is correct.

Q. And isn't is also a fact, Mr. Custer, that in the opening of these bids for—on a particular lot and in a particular schedule you frequently find that there is no difference in the discounts allowed by one bidder as against another?

A. On the same class of material?

Q. Yes.

A. They are.

Q. Is that correct? Is that correct?

A. That is correct.

Mr. MacIntyre: That is all.

Recross Examination by Mr. Stewart.

Q. Mr. Custer, is it not a fact that in determining whether or not these bids are identical that you would have to know whether or not the terms of discount were the same?

Mr. MacIntyre: Now, I object to the question unless it is made clear as to whether or not that question—the use of the word "bid" is referring to an overall bid, or whether it is referring merely to the price that is included in the bid, the monetary sum quoted.

Trial Examiner Norwood: I think that he can answer that. It may be clarified.

Objection overruled.

1997 Answer the question.

The Witness: May I have the question?

Trial Examiner Norwood: Read it.

(Question read.)

A. For the purpose of determining the award, yes.

Mr. Stewart: That is all.

Trial Examiner Norwood: Thank you, Mr. Custer.

Mr. MacIntyre: That is all.

(Witness excused.)

Trial Examiner Norwood: Dr. Nourse will resume the stand.

DR. E. G. NOURSE resumed the stand and testified further as follows:

Trial Examiner Norwood: Cross-examine the witness.

Cross-Examination by Mr. Gilpatric.

Trial Examiner Norwood: Proceed.

Q. Dr. Nourse, at the conclusion of your examination by Mr. MacIntyre you were asked to comment on the identity of quoted prices of a standardized commodity at a particular destination from which the sellers are located at differing distances freightwise, and you stated, I believe, that this condition—this identity of quoted prices indicated to you the absence of a competitive market. Am I

1998 correctly summarizing your answer?

A. No. I would hardly think that was a correct statement. I think the statement was, rather, whether that came within the statement of competition for standardized commodities as laid down in ordinary theoretical treaties of economics. I think there is a slight distinction there.

Q. You were speaking, then, of theoretical market?

A. Yes.

Q. Well, if you add to the facts assumed in that question that was asked you on direct examination the further fact that the competing sellers who choose to quote at this particular point knew from prior sales made at that place or from information conveyed to them by their salesmen that the market prices on that commodity had reached a common level, in your mind would the identity of prices quoted for the future necessarily be inconsistent with your concept of a competitive market?

A. Yes. I should say that that is not a competitive market as the economists define it. There are types and types of competition, of course, which would get us into quite a theory—quite a discussion of theory there, but it seems to me that if you have a situation of that sort it contemplates a sacrifice of some advantage in that market by the men favorably—the producer more favorably situated with reference to it, and any such sacrifice of
1999 advantage, for whatever reasons—competitive if you would like to call them that—is not part of the general theory of an open competitive market.

Q. Doesn't the fact that I assumed in my question, that sellers choose to quote at all on that market, regardless of the sacrifices, take care of the point you mentioned?

A. I should hardly think so.

Q. My point is that if, as you testified, sales prices tend to be uniform in a competitive market—am I correct in that statement of your testimony? Sales prices are contrasted with price—prices quoted, quotations?

A. Yes.

Q. —why does it not follow from this further fact I asked you to assume, namely, the knowledge by the sellers of the fact that there is a prevailing level of prices and that with that knowledge they choose to quote that point?

A. Well, in the absence of an artificial pricing system such as indicated there, the equalization would take place by certain persons not selling on that market, or by—from the standpoint of the buyers in that market they would equalize price by selecting those which, whatever the delivered terms were, were equivalent to them as laid down in that market. That probably would exclude the less advantageously situated producer.

Q. My question assumes the existence of that condition, namely, that through the interplay of these factors
2000 you referred to in a competitive market price you have reached a common level.

A. Yes.

Q. Now, sellers at differing distances freightwise choose to quote in that market, I am asking you whether the fact that they quote at the prevailing price isn't perfectly consistent with competition.

A. Well, it is consistent with a certain type of competition, but it seems to me it is not covered by this explanation of one price realization in a market would be affected than by the choice of sources of supply on the part of buyers,

taking these differentials into account and by limitation of the markets in which they would sell, taking advantages and disadvantages into account on the part of the producer, unless there would be an equivalent of price brought about, but that is very different from the quoting of prices in that market by producers who are differently situated. What I am trying to say is that those are two different situations in terms of an economic process in terms of determining a market. One is the one which comes about automatically in a market which is not administered, regulated, controlled, or, if you want to say, sophisticated, whereas the other indicates a difference and an evolution beyond that situation, and to say that a theory which explains the first situation applies to the second is, I think, logically inadmissible.

2001 By Mr. Robison:

Q. Dr. Nourse, did I correctly understand you as saying, at least in substance, that where costs of different producing sellers are different their quotations in any area should be different?

A. Well, the normal way of quoting—that is, if you start in simple systems of pricing, it would be quoted at the place of production.

Q. But you have not in your testimony, as I have understood it, you have not confined yourself with reference to quoting to the matter of quoting at the point of production; have you?

A. No.

Q. And I am not sure—I don't think you answered my question—if you did, I didn't appreciate it. My question was whether I correctly understood you as saying that where costs of different producing sellers are different their quotations in a given area should be different. That is what I understood you to say. I am merely trying to find out whether I correctly understood you.

A. That is simply what you would expect of the operating of the ordinary competitive forces. There differences in situations would be reflected in the difference of their offering prices.

Q. Now, in expressing that view and answering my question now, are you speaking solely in terms of economic theory?

2002 A. Yes.

Q. Your answer is "yes"?

A. Yes.

Q. And at that point does self-interest on the part of both buyers and sellers constitute a necessary and material element in the conception of a market as you used the term "market"?

A. Yes. It is basic to it.

Q. It is basic to it. I will ask you to assume, Dr. Nourse, that the price at which a commodity such as rigid steel conduit is being sold in any area at a given time is no higher than the cost to that producer attempting to sell in that market who has the lowest cost incurred in producing the commodity and handling it to a purchaser in that area. Now, under such circumstances would you expect any of the producers attempting to sell in that area to quote a lower price than those quoted by such lowest cost producer?

Mr. MacIntyre: I object. It calls for the witness' statement in answer to a hypothetical set of facts that have no application in this case or to any respondent connected with this case. It is absolutely foreign to the case.

Mr. Robison: Your Honor will see that I am merely searching and trying to get at an understanding of what the witness means and how far he applies the view that he has told me that he has expressed.

Trial Examiner Norwood: I think that counsel has 2003 a right to do that on cross-examination.

Objection overruled.

Mr. MacIntyre: That is, whether they have any application to the case or not in testing the witness.

Trial Examiner Norwood: No. He has a right to test his expert knowledge and also to examine him with respect to these statements he has made on direct examination.

Mr. Robison: I am only trying to ascertain the applicability of the views expressed to certain stated circumstances.

Trial Examiner Norwood: Do you wish the question read?

The Witness: Yes, I would like it read.

Trial Examiner Norwood: Read the question.

(Question read.)

A. Well, if we are going to get this situation clear, I think I would have to ask before answering it for some further clarification to your question.

By Mr. Robison:

Q. Well, I will be glad to clarify in so far as—

A. You start out by saying if a standardized commodity

is being sold in a certain market. This doesn't have relation to quotations but to net price realization, I take it?

Q. No. I did not refer to net price realization.

A. When you say "sold"—

2004 Q. I am referring to the price at which the commodity is offered for sale in the area that we are speaking about, whether it is produced in that area or outside of it.

A. Are we talking now about quotations or about actual sales?

Q. That part of my question has reference to actual sales, the actual market price as determined by sales taking place at the time we are speaking of.

A. All right. Now, we start from the first proposition, if a standardized commodity is being sold the actual price paid for it in a given market—now, if you will continue with the question.

Q. The price which has been referred to now is no higher than the cost to that producer attempting to sell in that area who has the lowest cost?

A. That means a delivered cost?

Q. Yes.

A. Who has the lowest delivered cost in that market?

Q. Who has the lowest delivered cost including, of course, cost of production. Now, under such circumstances would you expect any of the producers who at the time are attempting to sell in that area to quote a lower price than that quoted by such lowest cost producer?

A. No. They presumably would not quote a lower price in that, but they wouldn't necessarily quote in that

2005 market.

Q. Wouldn't necessarily quote at all?

A. It might not be regarded as part of their market.

Q. All right. Now, if they did quote at all in that market, under those circumstances, would you expect them to quote a higher price than that quoted by the lowest cost producer?

A. That would seem to be useless.

Q. So I take it your answer is you wouldn't expect them to do it because it would be useless for them to do so; is that correct?

A. Yes.

Q. Well, then, Dr. Nourse, is it accurate to say that in such circumstances as I have asked you to assume here you

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would not say that the fact that the costs of different producing sellers are different would lead you, as an economist, to expect different amounts in their quoted prices? I refer to the circumstances that have been assumed.

A. Well, it seems to me that you create a rather unreal situation there by starting from the lowest price—prices being quoted on the part of the—on the basis of the lowest cost delivered in that market.

Trial Examiner Norwood: Well, he is asking you to assume that, regardless of whether it is unreal or not. Assume that and—

The Witness: But he limits the answer to the question to that precise situation.

2006 By Mr. Robison:

Q. That is exactly what I would like an answer concerning from you.

A. Well, my answer is definitely that, that if the price quoted in a market is that of the lowest delivered cost producer in the market, you wouldn't expect—and you have a strictly standardized commodity so that there is no advantage in auxiliary qualities of the product or terms of delivery or whatever—you wouldn't expect other people to go in and overquote that particular situation.

Q. And by "overquote" do you mean quote above that price?

A. Quote above that price by a considerable amount.

Q. Then, you wouldn't expect them to quote either above or below?

A. No.

Trial Examiner Norwood: Assuming that the low cost producer is selling at cost; isn't it?

Mr. Robison: Yes, that is assuming that.

The Witness: That the most favorable producer is selling at cost.

By Mr. Robison:

Q. Your answers to my questions, Dr. Nourse, have seemed to me to reflect some doubt in your mind as to whether such a situation as I have asked you to assume would commonly arise. I will ask you this question: What do you say as to whether such a situation might not
2007 arise where the particular commodity concerning—to which you and I were referring is sold in competi-

tion with another and cheaper commodity which may be used in substitution for it?

Mr. MacIntyre: I object. It calls for speculation as to what someone might do in a particular situation. The witness on direct examination was not qualified to testify as to what a rigid steel conduit manufacturer might do under the conditions existing in the rigid steel conduit industry, or for that matter as to what "X" as a manufacturer in any industry would do in his particular situation.

Trial Examiner Norwood: Objection overruled.

By Mr. Robison:

Q. Have you the question in mind?

A. Well, if I understand the question—

Mr. Robison: Let us have the question read, may we?

Trial Examiner Norwood: Read it.

(Question read.)

A. Well, it seems to me that that changes the focus or broadens the scope of the line of inquiry on which I testified in direct. There we were talking of a single standardized commodity.

By Mr. Robison:

Q. That is true, and my only reason for asking
2008 you this last question is because you have seemed to evince some doubts in your own mind as to whether such a situation might in practice arise.

Now, I am asking you whether the situation—

A. But my doubt is still limited to the situation of a single standardized commodity.

Q. Being sold without any other and particularly any cheaper product—

A. No, I wasn't raising that question at all. That, I think, was simply introduced in your last question.

Q. That is true.

A. And it goes beyond the scope of my testimony this morning, I think.

Q. That may be. I was only trying to find out from you whether the doubts that you seem to indicate concerning the set of facts that I asked you to assume might be in any way lessened if you assumed that there was a cheaper product being offered for sale for use in substitution for the product that you and I were talking about.

A. It seems to me that would still lie outside of the scope of my testimony this morning.

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Q. All right.

Trial Examiner Norwood: He didn't ask you that.

The Witness: Well, was it incumbent on me to follow him—

2009 Trial Examiner Norwood: I will decide whether it is outside the scope.

The Witness: Well, I haven't qualified—

Trial Examiner Norwood: Read the question.

The Witness: —as an expert on particular situations which are of the sort that are now being raised.

Mr. Robison: I will accept the witness' answers thus far without pressing it further.

Trial Examiner Norwood: All right.

By Mr. Robison:

Q. In certain questions that were asked of you on direct examination, Dr. Nourse, the term "cost to the purchaser at the place of delivery" was used. In your understanding of those questions and in making answers to them were you making any distinction in your own mind between the term "cost to the"—"cost to the purchaser at the place of delivery" and the term "price at the place of delivery"?

Mr. MacIntyre: I object.

Mr. Robison: I would like to go back and make a physical correction there. I said—

Trial Examiner Norwood: Make your correction, counsel.

Mr. Robison: Will you read the question?

Trial Examiner Norwood: Read the question.

(Question read.)

2010 A. Yes, I think a distinction has to be made, because ordinarily "price" is used as some formal price without including in it all the appurtenances, the terms of sale, and so forth, which do affect the costs to the purchaser.

By Mr. Robison:

Q. Well, I just wanted to ascertain in what sense you understood the term.

Dr. Nourse, do you consider yourself an expert on marketing as an economist?

A. Marketing is a very broad field. Yes, in general terms, I should say—that doesn't necessarily mean on every phase of marketing.

Mr. Robison: That is all.

Trial Examiner Norwood: Any further cross-examination?

Any redirect?

Mr. MacIntyre: I have a question.

Trial Examiner Norwood: Thank you, Doctor.

Mr. MacIntyre: I have a question.

Trial Examiner Norwood: Oh.

Redirect Examination by Mr. MacIntyre.

Q. Doctor, one of the first questions that Mr. Gilpatric asked you and which brought from you the answer that in your references to the uniform quotations and the
2011 uniform exchange, or paid prices, that you were talking about theoretical markets. Do you recall that answer?

A. Yes.

Q. I will now ask you in that connection whether you have any knowledge as to how the actual markets and actual market prices are developed in industries which bring about and use uniform delivered price quotations on standardized industrial products in this country?

Mr. Robison: May I have that question read?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Robison: I take it the question calls for a "yes" or "no" answer, do you have any knowledge?

Trial Examiner Norwood: Answer the question?

A. Do you have any knowledge? Yes. (Laughter.)

By Mr. MacIntyre:

Q. I ask you further, then, if that knowledge extends to the point of being able to tell us as to how the manufacturers of rigid steel conduit, the manufacturers of various iron and steel products other than rigid steel conduit, arrive at and use in their so-called actual markets uniform delivered price quotations?

Mr. Robison: I object.

Mr. King: I object.

Mr. Stewart: I object to that on the ground that
2012 manifestly the Doctor couldn't know that. He could have his ideas about it.

Mr. King: I object, sir, further on the ground that it is without the scope of the redirect and on that same ground I move to strike the prior question asked.

Trial Examiner Norwood: I think this goes as to whether or not his answers or his theory is based on experience. Now, that is perfectly proper for that to be brought out on the redirect.

Mr. MacIntyre: It covers that, if Your Honor please, and it covers something a little more. It covers that point that Mr. Gilpatric brought out that there is something in these markets that removes them from the—or at least some of these markets that removes them from the theoretical competitive markets.

Mr. Stewart: But the point I make is this—

Mr. MacIntyre: Let us find out—

Trial Examiner Norwood: You better bring those things out one at a time.

Mr. MacIntyre: Yes.

Mr. Stewart: The point I make is that I don't see how, in view of the fact that Mr. MacIntyre only a few minutes ago made a strenuous argument that he was asking nothing about the rigid steel conduit industry and the witness didn't pretend to know anything about it, that
2013 he now is asking how the prices are intended to be determined in the rigid steel conduit industry. That is my objection.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: The objection is overruled. Answer the question.

A. No.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Thank you, Doctor.

(Witness excused.)

Trial Examiner Norwood: Call your next witness. Let the record show this witness is discharged. Call your next witness.

Mr. MacIntyre: May we go off the record for a minute?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back on the record now.

Mr. MacIntyre: If Your Honor please, the evidence which I have introduced here completes the evidence for the counsel for the Commission in this case, except that I ask at this time that I not, before the record in this case is closed, be denied the right to offer particular invoices, or copies of invoices, from the files of these respondents

for the purpose of showing variations in amounts
2014 received at shipping points on shipments made by them, the geographical distribution of their shipments to particular towns or states, and in so far as the invoices on current shipments go, the showing of whether or not that the shipments thus made on current orders were made at the so-called card prices. I don't believe that I would be in a position until some time near the close of the record in this case to have invoices available for the making of any showing in either of those three directions, because we have found it necessary as to some of these respondents to go to their places of business, make copies of invoices from their records, because they reported to us that they had no time to make them, themselves. The work has been going forward, but isn't half completed. If we make any use of those invoices in any sort of a completed form I don't believe that it can be done before respondents start their defense, whether that is started in one week or two weeks or four weeks from now. We still wouldn't have the invoices so that we could make use of them by that time, but, of course, if any use of them is made in this case it would have to be made before the record is closed, and I most certainly, when the use is made, if any, of the invoices, would expect that the responden's be given the right to meet those invoices which are offered for any one of those three purposes.

Trial Examiner Norwood: Now, if I understand it, the
2015 counsel is now resting his case subject to the right to introduce this testimony he has specified here on the specified points; is that right?

Mr. MacIntyre: That is true.

2018 Trial Examiner Norwood: Now, I shall allow this motion of the counsel for the Commission that the case be considered rested by the Commission, with the reservation we have discussed here and entered upon the record, and objections to that procedure are overruled.

I have discussed with counsel on both sides off the record the matter of a day, and we shall reconvene on the first Monday in December, which is December 1st, at which time respondents will be expected to begin producing their evidence.

Mr. Welch: May we go off the record?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

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Trial Examiner Norwood: On the record.

You may put your motions on the record or you may file them with the Commission in writing.

Mr. Austin: I simply wanted to serve notice on Mr. MacIntyre that I plan to file a motion with the Commission to dismiss with respect to all the clients I represent, and I believe I will ask for the privilege of filing a brief and arguing the motion.

Mr. Welch: I would like to serve the same notice on behalf of the clients I represent.

Mr. Gilpatric: On behalf of the Youngstown Sheet & Tube Company, we give the same notice.

2019 Mr. Taylor: We make the same motion.

Mr. Bozeman: We make the same motion on behalf of General Electric Company, General Electric Supply Corporation, and A. E. Newman.

Mr. Peyser: I make the same motion on behalf of Triangle Conduit & Cable Company and on behalf of M. B. Austin.

Mr. King: I did not think it was necessary to give such notice under the Commission's practice, but if Your Honor thinks it is necessary, I will be glad to do so.

Trial Examiner Norwood: Well, the Commission will consider the motions, anyway. Counsel have stated their reason for putting it on the record here.

Mr. Houston: If Your Honor please, I make the same motion on behalf of my clients whom I am representing.

Mr. Stewart: As I see it, in view of the fact that all these motions have been made, we are all in it whether we want to be in it or not.

Mr. MacIntyre: Now, I want to say that, of course, I have taken cognizance of the notice, and I also at this time make a motion that we name as a date for the next hearing in this case for respondents to start putting in their evidence not later than three weeks from next Monday. I believe that that is quite a long time for the intermission for such purpose.

Trial Examiner Norwood: I would say to the coun-
2020 sel that the motion in that respect is overruled and that we are appointing, as heretofore stated, December 1st for the next hearing, at which time the respondents are hereby notified they must begin to produce testimony.

Now, is there anything further?

There appearing to be nothing further at this time, the

hearing is now adjourned to reconvene in Room 332, Office of the Federal Trade Commission, Washington, D. C., Sixth and Constitution Avenue, Northwest, at 10 o'clock a. m., on Monday, the first day of December, 1941.

(Whereupon, at 3:10 o'clock p. m., October 31, 1941, the hearing in the above-entitled matter was adjourned.)

2023 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on October 31, the hearing in Docket 4452 is now reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., Eastern Standard Time, December 1, 1941.

Please note the appearances.

Now, I have some requests for corrections to the record, and I haven't been able to check up on all of them. Counsel here this morning probably have some more. If they will give them to me I will check them at as early a date as possible, and we will enter the corrections at the beginning of some hearing so that you can find them the more easily.

The Respondents may now proceed to produce their evidence.

Mr. Stewart: Mr. Quinn, please. He has been sworn. He was sworn in Pittsburgh.

L. R. QUINN was thereupon called as a witness for the Respondents, and, having been previously duly sworn, testified as follows:

Trial Examiner Norwood: Previously sworn in the case.

2024 *Direct Examination by Mr. Stewart.*

Q. Mr. Quinn, you are the vice-president of the Enameled Metals Company, one of the Respondents here?

A. That is correct.

Q. And will you give us in addition your business experience prior to and including your connection with the Enameled Metals Company?

A. I was with the American Can Company from 1905 to

1917. I was loaned by the American Can Company to organize the Lisk and Reed companies in New York State from 1909 to 1915. Then I was called back to build the munitions plants of the American Can. From 1917 until 1919 I was first a captain and then a major in the Ordnance Department. In 1919 I went to Pittsburgh with the Enameled Metals Company.

Q. And you have been with the Enameled Metals Company ever since 1919?

A. Yes.

Q. Mr. Quinn, there has been some testimony here with reference to rigid steel conduit, armored cable, and e.m.t., which, as I understand it, is electric metallic tubing. Before you you have a box containing samples of those products, do you not?

A. That is correct.

Q. Will you pick out the sample of rigid steel conduit?

A. There are the two samples of conduit. I guess
2025 there are three samples. There are three samples.

Q. Three samples. Now, will you take these three samples and tell us the difference between them—

Trial Examiner Norwood: Well, you can mark those for identification on the tags.

Mr. Stewart: On the tags?

Trial Examiner Norwood: Yes.

(The samples of rigid steel conduit referred to were marked for identification "Respondents' Exhibits Nos. 23, 24, and 25.")

(There was a discussion off the record.)

By Mr. Stewart:

Q. Now, I show you Respondents' Exhibit No. 23, and ask you what that is, Major Quinn.

Trial Examiner Norwood: Just a minute.

Now, what did you mark, 23, 24, and 25?

Mr. Stewart: Yes; that is right.

A. No. 23 is a sample of black enameled conduit.

By Mr. Stewart:

Q. Now, will you start from the beginning of the process, as it were, and tell us how that sample emerges in the present state?

2026 Do you want me to start right from the iron ore?

By Mr. Stewart:

Q. No; just from the pipe. Start with the pipe.

2027 Trial Examiner Norwood: I would sketch it.

Q. Just sketch it.

Trial Examiner Norwood: I wouldn't put too much time on it.

A. Well, the production of black enameled conduit starts with merchant pipe, which is the ordinary commercial product made by various pipe mills. The material is first cut to size. Then it is pickled, it is threaded; then it is dipped in, or sprayed, or by various methods the black enamel is applied. It is baked, the coupling is applied, and it is bundled for shipment.

Q. Now, is that the product, that is, the exhibit you have in your hand, about which there has been some effort made to eliminate that particular type of conduit?

A. That is correct.

Q. All right.

Now, will you take the sample of the next number, 24. Tell us what that is.

A. This is sheradized conduit, and, unfortunately, I can't give you the various stages of manufacture. Somebody who makes it would have to give you that. It is the—the zinc—it starts with raw pipe, and is pickled and threaded, and then the zinc is applied by the sheradizing process with which I am not familiar.

Q. Now, is the sheradizing process a process which

2028 is in use by particular manufacturers, not manufacturers generally?

A. That is correct.

Q. Now, take the next sample.

A. Sample 25 is electro-galvanized.

Trial Examiner Norwood: That is, Respondents' Exhibit 25, for identification?

The Witness: I say sample 25.

Trial Examiner Norwood: Yes.

A. (Continuing.) Is electro-galvanized. The start is the same with merchant pipe. It is pickled and threaded; then it is—the zinc is applied by the electro-galvanizing process. This particular sample does not have a supercoating of enamel over it. In our product we put a coating of enamel over the electro-galvanized coating. The coupling is applied; it is bundled and shipped.

By Mr. Stewart:

Q. Now, the electro-galvanizing process, is that a process which is used by all manufacturers?

A. No. It is only used by certain manufacturers.

Q. And you spoke of the method that you pursued in making your product. Is that something different by your company, or is that in general use?

A. Practically every company has their own equipment. There are various methods of applying galvanized by the electro-galvanizing method, but the result is the same.

2029 It is the electro-depositing of zinc on the pipe, but the actual method of application may be different according to different types of machinery.

Trial Examiner Norwood: Well, now, is that put on to prevent rusting?

The Witness: That is put on to prevent rusting. Zinc is supposed to be the best known coating.

Trial Examiner Norwood: Is anything done to the inside of the crude pipe?

The Witness: It is the inside of the pipe of electro-galvanized. In our particular case we spray the enamel, the black enamel, which is similar to the black enamel on sample 23. We spray the black enamel on. It is also optional with manufacturers as to various methods of applying the interior coating, and that also is a rust preventative.

By Mr. Stewart:

Q. Now, will you describe the manner in which that is used—the three samples, or any one of them, for that matter, is used in the construction of buildings.

A. Rigid conduit is supposed to be the safest method of installation of electrical wires. The pipe is installed in the location of the building as designated by the engineers, and the entire raceway is built in before any wires have gone in.

Then, after the installation of the rigid conduit, which 2030 is just what its name implies, rigid, the wires are drawn in. They may be removed at will. The wires may be drawn out and put back, which is one of the salient features of rigid conduit over other more reasonably priced methods of installing wires.

I don't think you want a long definite electrical—

Q. Now, do you have a sample of armored cable in that box?

A. (Producing.) Yes. This is a sample of armored cable.

Mr. Stewart: Will you mark it, please.

(The sample of armored cable referred to was marked for identification "Respondents' Exhibit No. 26.")

By Mr. Stewart:

Q. I hand you Respondents' Exhibit, for identification, No. 26 and ask you what that is.

A. That is a piece of armored cable.

Q. And what is that used for?

A. It is used for the electrical wiring of buildings.

Q. With reference to cost, is it a more expensive or cheaper product?

A. It is a cheaper method of installation.

Q. And what is the general use for it as compared with the use of rigid steel conduit?

A. Well, the general use of armored cable is the running of extensions over the main entries and places where
2031 the architects have felt that it was not necessary to go to the expense of running a conduit system. It is also used extensively in the re-wiring of old buildings, and it is used very extensively in small houses.

We do not make it, so I am not as familiar with all of the places it can be used as somebody else might be.

Q. Is it a competitive material with rigid steel conduit?

A. It is competitive in those points where the code allows it to be competitive.

Q. You speak of the code. What code do you mean?

A. I mean the individual code of the municipalities.

Q. Now, do you have a sample of e. m. t. in there?

(The witness produces a sample.)

Mr. Stewart: Will you mark that, please.

(The sample of e. m. t. referred to was marked for identification "Respondents' Exhibit No. 27.")

By Mr. Stewart:

Q. I show you Respondents' Exhibit No. 27, for identification, and ask you what that is.

A. This is a piece of e. m. t.

Q. And that means electrical metallic tubing?

A. Electrical metallic tubing.

Q. And what is that used for?

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A. This is also a raceway that is used in a competitive way with conduit.

2032 Q. Is it a more expensive or cheaper material?

A. It is a cheaper material.

Q. Major Quinn, there has been some testimony in this case with reference to heavy wall conduit and thin wall conduit. Will you tell us which is which among the samples.

A. Well, samples 23, 24, and 25 are rigid conduit, and sample 27 is electrical metallic tubing.

Trial Examiner Norwood: Which are the heavy?

The Witness: The distinction between heavy wall conduit and thin wall conduit, 23, 24, and 25 are the heavy, and 27 is the thin wall.

By Mr. Stewart:

Q. Now, why do you call it "thin wall"?

A. It is thinner. The thickness of the steel in the wall is less so it is called "thin wall" because it is a thinner wall.

Q. Now, Major Quinn, you have made some reference to raw pipes. Essentially, what is conduit?

A. Essentially, conduit is ordinary heavy weight merchant pipe prepared for conduit.

Trial Examiner Norwood: Well, is that a galvanized pipe?

The Witness: No, that is raw pipe. It is the raw pipe as it comes from the pipe mill.

Trial Examiner Norwood: What is the difference, 2033 then, in your No.—

The Witness: 25?

Trial Examiner Norwood: —25 and wrought iron pipe?

The Witness: Well, ordinary wrought iron pipe is hot galvanized. You haven't a sample of hot galvanized here. 24 is sheradized, and 25 is electro-galvanized. They are never sold as merchant pipe.

Mr. Stewart: Mark this for identification, please.

(The sample of hot galvanized conduit was marked for identification "Respondents' Exhibit No. 28.")

By Mr. Stewart:

Q. Now, Major Quinn, I show you Respondents' Exhibit No. 28 and ask you what that is.

A. This is a sample of hot galvanized conduit.

Q. Now, that is distinguished from—what number is it?

A. 24 and 25.

Q. What is the difference between the two?

A. In this case the zinc is applied by immersing the pipe in a tank of molten zinc, and that applies the zinc to the inside as well as to the outside of the pipe.

Q. Now, from the standpoint of the electrical use, that is, the use of electrical apparatus as conducted by this rigid steel conduit, what is the virtue of rigid steel conduit?

2034 A. The principal virtue is safety. The wall is of sufficient thickness that in the installation in a building nails cannot be driven through it; and the construction men in hauling foreign materials will not crush it. It is impervious to almost any reasonable abuse. Then, of course, it is coated with these coatings of zinc or enamel, or zinc and enamel, which makes the article impervious to almost any reasonable amount of rust. But the principal advantage is the safety of the installation. After the building is completed your wires can be drawn in, and there is no danger of any ruination of the wires, and after the building is erected to a large degree they can be withdrawn. Whereas in other methods, why, they are subject to every attack, both rodents and human, mechanical. Whereas in the case of conduit they are free from almost every reasonable element of abuse.

Q. Now, from the standpoint of its being a conductor or non-conductor of electricity, what is the difference?

A. One of the uses of conduit is to protect a wiring system against a short. It being a steel product, it will pick up and ground a stray current, and thereby free the building of possible loss by fire which would be present in the case of an exposed short.

Mr. Stewart: In connection with this testimony, I offer in evidence Exhibits 23 to 28, inclusive.

2035 RESPONDENTS' EXHIBITS NOS. 23 to 28, both inclusive, were offered and received in evidence.

2036 Trial Examiner Norwood: Proceed.

By Mr. Stewart:

Q. Now, Major Quinn, to get back just a moment to the matter of the manufacture of rigid steel conduit. Can you take any one of those samples and show us the mer-

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chant pipe aspect of the problem? Take any one and illustrate a little bit.

A. Well, there is a hot galvanized merchant pipe which is sold, but it is generally considered not usable for conduit because the same care is not used in its preparation, in the first place, so as to afford easy bending quality. We are supposed to get the center of the ingot for the skelp that is used in the conduit. In other words, we are supposed to get the finest part of the ingot for conduit.

Merchant pipe is 20 foot long, has an entirely different thread, and the inside is apt to be rough from the galvanizing operation, because the same care is not used. And then in addition we put on—when I say "we" I am referring to the Enameled Metals Company, and not the industry—we put a coating of enamel both on the inside and on the outside so as to make the interior raceway entirely smooth, so as to make the wires impervious to damage. Whereas in a merchant pipe, there is nothing done, no necessity for keeping the inside smooth.

Q. Now, is merchant pipe a cheaper or more expensive material?

2037 A. Well, we do not make merchant pipe. I would say roughly that is comparable. It may be a little less expensive because it is in 20-foot lengths, and it depends on how it is sold. I think that merchant pipe is more expensive out of the jobber's place of business than conduit.

Trial Examiner Norwood: Off the record just a minute.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. Stewart:

Q. Well, now, while we are on the subject of these various products—

A. Mr. Stewart, may I add something for the record? It is in line with what Mr. Norwood just asked me.

One of the requirements of the Underwriters Laboratories is that the interior of galvanized pipe be coated with a distinctive lacquer so that it can be immediately identified from merchant pipe. That is one of the requirements of the Underwriters Laboratories, the Underwriters Laboratories feeling that merchant pipe is not the correct product for the use in electrical wiring, and they require a distinctive internal coating.

Q. Well, is merchant pipe in fact—has it been in fact used for electrical wiring?

A. There have been attempts to use it, but in all
2038 cities that have a municipal code with municipal inspectors, they have refused to allow its installation.

Q. You spoke of the Underwriters Laboratories. Will you describe that organization so that the record is clear as to what it is.

2039 The Witness: The Underwriters Laboratories—

Mr. Stewart: Just a moment, please.

Trial Examiner Norwood: Go ahead. I am listening.

The Witness: The Underwriters Laboratories is a non-profit organization established by the National Board of Underwriters, I think, and they have laboratories in Chicago and branches in various cities. It is their duty to see that all materials going into any building are supposed to be as free from fire hazard as can reasonably be expected in a commercial product. They not only cover electrical, but they cover almost every form of hazard, not only fire but all hazards to which the insurance companies are put by the writing of insurance policies.

By Mr. Stewart:

Q. Now, what, if any, control did the Rigid Steel Conduit Association, or its members, have over the Underwriters Laboratories?

Mr. MacIntyre: I object. The question calls for a conclusion and speculation, and not for a statement of
2040 facts from this Respondent as to what the Respondents did from which the Commission or the courts may draw the conclusion as to what control they exercised.

Trial Examiner Norwood: Read the question, please.

(Question read.)

Trial Examiner Norwood: Objection overruled.

You may examine him on this.

A. The Rigid Steel Conduit Industry has no control over the Underwriters Laboratories; but, on the contrary, the Underwriters Laboratories have control over rigid conduit manufacturers.

By Mr. Stewart:

Q. Why is that?

A. Because you have to manufacture your material to meet their standards—not our standards, but their standards. They establish the standards; we don't.

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Mr. Stewart: Mark this, please.

(The document referred to was marked for identification "Respondents' Exhibit No. 29.")

By Mr. Stewart:

Q. Now, Major Quinn, you have in your hand Respondents' Exhibit No. 29, for identification. I ask you what that is. Do you know what that is?

A. This is standards that were adopted by various manufacturers of rigid conduit as more of an ex-
2041 planatory standard than any required standard. It was developed to put out with the engineers to show in what way we complied with the Underwriters Laboratories and went to greater lengths in explaining the various things connected with conduit. That is not part of the underwriters' specifications.

Q. You speak about compliance with the Underwriters Laboratories. Just what do you mean by that?

A. If you will notice any one of these conduit labels—I am using Exhibit 28—you will notice a yellow section in there that reads "Underwriters Laboratories, Inc. Inspected. Rigid Conduit." Then there are two identifying numbers which show the lot number in which the material is made, a different lot number being given to each 25,000 feet of conduit—250,000 feet of conduit.

Q. Yes, but what does that mean? You understand what that means; we don't.

A. The Underwriters Laboratories have inspectors that come into our plant. They have printed specifications that we have to comply with, and they come into our plant and they examine, not every piece of pipe, but they examine at random all sizes of pipe and apply their tests. In addition to this, there are samples taken at the time of every visit, that are sent to the laboratories at Chicago and there tested in the laboratory beyond the possible in-
spection that could be given in the field, and in addi-
2042 tion to that fact the Underwriters Laboratories' inspectors in the field go right to the jobs and take off of the jobs samples of the product as it is being installed, and they are sent to laboratories in Chicago to see that the material ultimately reaching the point of installation is actually up to the specifications as established by the Underwriters Laboratories.

Q. What happens if the material is not up to specifications?

A. They will not allow you to put this label on it, and without this label you cannot install the material because the municipal inspectors will not, as a rule, allow the installation of any electrical product that does not bear the Underwriters Laboratories' seal of inspection, and if your material fails to meet their specifications in the laboratory tests, you are given a demerit, and I don't know how many demerits it would take before they closed your plant, but if the demerits were in sufficient number to make your plant inefficiently operated they would close you and not allow you to operate until you brought your material up to their accepted standards.

Trial Examiner Norwood: Is the thickness of that pipe a substantial consideration?

The Witness: Oh, it is the—the—the absolute thing that makes the conduit the safest known method of installing electrical wires.

Trial Examiner Norwood: So the inspectors look 2043 for that?

The Witness: Oh, yes, they test that. That is part of your code requirements. Not only the thickness, but the internal diameter to see that your—to see that there is enough air space in and around the wires.

Trial Examiner Norwood: So the number of wires that can go in one is limited?

The Witness: Oh, yes. Only 40 percent of the internal space can be occupied with wires.

By Mr. Stewart:

Q. Now, Major Quinn, you spoke about the affixing of labels approving your material by the Underwriters Laboratories. Who pays for that?

A. The manufacturers.

Trial Examiner Norwood: Is that by law?

The Witness: No. It is—it is—it would be possible to manufacture conduit without the manufacture—without the underwriters' labels, but you would only be permitted to install it in the case of industrials who do not carry fire insurance. For instance, many industrials carry their own insurance, or in localities that did not have a fire code. But the field is very, very limited.

By Mr. Stewart:

Q. Well, as a practical matter, could you carry on the manufacture and sale of conduit if you did not have
2044 the Underwriters Laboratories' approval?

A. You could not.

Q. Now, Major Quinn, directing your attention to the matter of the various companies engaged in the manufacture and sale of conduit, will you take each company, give us its location, and, if you know, the method pursued by it in the manufacture and sale of conduit?

A. Well, I have a list here in my portfolio, if I may refer to it.

Q. Yes, certainly.

2045 A. Now, in giving you the names of those companies that buy their conduit, I will have to use my knowledge and belief, because I can't—I can't speak authoritatively for any company who does not manufacture it.

By Mr. Stewart:

Q. Well, then, you can go as far as you can and
2046 then Mr. MacIntyre can move to strike it out if it turns out that it is erroneous. Hearsay isn't exactly forbidden in this case, as I recall it.

Mr. MacIntyre: I haven't said that I desired any hearsay, and I will attempt to stay away from it. I can say this, that I do object to this witness giving any answer based upon beliefs as to what other people are doing. We have ways, in fact, we discovered some and used them, of getting into the record a factual showing of what they do a little better than beliefs. I object to him stating a belief.

Mr. Stewart: I will offer to show by the executives of the particular companies involved, if necessary, the facts with regard to each particular company in so far as Major Quinn probably gives it as a matter of his own knowledge of the business generally.

Trial Examiner Norwood. Read what he said there about his knowledge of these facts.

(Last answer read.)

Trial Examiner Norwood: Who does not manufacture it? You mean those that—

The Witness: Those that buy their finished product.

Trial Examiner Norwood: —that do not manufacture their own?

The Witness: Yes.

2047 Trial Examiner Norwood: But can you give us accurate knowledge as to these who manufacture their conduit?

The Witness: Yes. Yes.

Trial Examiner Norwood: Well, you confine yourself to those.

Answer the question, then.

The Witness: Do you want me to also give you the brand name at this time?

By Mr. Stewart:

Q. No. I will ask you that later.

A. Cohoes Rolling Mill, Cohoes, N. Y. They manufacture the pipe up to certain sizes. Beyond certain sizes they buy their merchant pipe and convert it into conduit. They make enameled and hot galvanized conduit.

Enameled Metals Company: They manufacture enameled, electro-galvanized, and hot galvanized conduit. They buy their pipe—they buy their merchant pipe and convert it into conduit. They are located at Etna, a suburb of Pittsburgh.

Fretz-Moon Tube Company: They manufacture their merchant pipe up to certain sizes and buy beyond that. They make hot galvanized and enameled, and they are located at Butler, Pa.

The Garland Manufacturing Company: They buy their merchant pipe and convert it into conduit. They make enameled and electro-galvanized. They are located 2048 in West Pittsburgh, Pa.

Laclede Steel Company manufactures their pipe and fabricate it into conduit. They make enameled and hot galvanized. They are located in or about St. Louis, Mo.

The Clayton Mark & Company: They are equipped to manufacture conduit after they buy the merchant pipe. Sometimes they manufacture and sometimes they buy the finished product, depending upon the economic advantages to them in either case. They sell enameled, electro-galvanized, and hot galvanized conduit. They are located in Evanston, Ill.

The National Electric Products Corporation manufactures enameled, sheradized, and electro-galvanized conduit. They buy the merchant pipe and fabricate it into conduit. They are located at Ambridge, Pa.

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The Steelduct Company buy merchant pipe and they ship it to the plant of the Enameled Metals Company who convert it into conduit. They sell enameled, electro-galvanized and hot galvanized. Their place of business is Youngstown, Ohio.

The Triangle Conduit & Cable Company buy their merchant pipe. They make enameled and hot galvanized. They are located at Moundsville, Pa.

Walker Brothers—

Q. You mean their plant; don't you?

A. Their plant is located at Moundsville, Pa.

2049 Q. West Virginia?

A. Moundsville, W. Va.

Walker Brothers buy their merchant pipe and fabricate it into conduit. They make enameled and sheradized conduit. They are located at Conshohocken, Pa. Somebody else will have to spell that for you.

The Youngstown Sheet & Tube Company are the only manufacturer of conduit that makes conduit from the iron ore to the finished product. They are located—they make enameled, electro-galvanized, and hot. They are located at Youngstown, Ohio.

The General Electric Company: They buy their finished —they buy their merchant pipe and convert it into conduit. They make enameled and hot galvanized. Their operating plant where the conduit is produced is New Kensington, Pa.

Spang Chalfalt: Spang Chalfant are in the same class with Cohoes and Fretz-Moon in that they buy their skelp from outside sources and not related, and they convert it into merchant pipe and then into conduit. They, however, make all sizes of conduit in their own plant. They manufacture enameled and hot galvanized.

Q. Do you know when Spang Chalfant started in the manufacture of conduit?

A. In the spring of 1940.

2050 Q. Now, Major Quinn, may I ask—

Trial Examiner Norwood: Does that complete his list there?

Mr. Stewart: Sir?

Trial Examiner Norwood: Does that complete his list?

The Witness: Well, there are two other selling organizations, but I have not named them. I understand the objection by Mr. MacIntyre forbade those.

(Discussion off the record.)

The Witness: There are two other selling organizations.

By Mr. Stewart:

Q. All right. Then complete your list. Go ahead. The fact that Mr. MacIntyre objects doesn't mean you can't answer the question.

A. The Clifton Conduit Company, whose main office is in New York City, that purchases finished conduit from the General Electric Company; the M. B. Austin Company, whose office is in Chicago, who purchases finished conduit from the Triangle Conduit & Cable Company. Both companies—both of these latter two companies make enameled—sell enameled and hot galvanized.

Q. And as distinguished from the other named companies, they are sales agents and not manufacturers?

A. That is correct.

2051 Q. Major Quinn, you have mentioned the various products,—that is, the various forms of rigid steel conduit. I should like to ask you as to whether or not rigid steel conduit is sold under trade names by the various companies?

A. They are; I think all are sold under a trade name.

Q. Are you familiar with those trade names—

A. In—to—in practically every case; yes.

Q. Will you give us the trade names, or, if you have a memorandum of them, will you furnish it.

A. Clifton Conduit Company—

2052 Q. Well, let me ask you, to save time.

A. All right.

Q. Does the document which you hold in your hand contain a correct list of the trade names under which the various companies sell rigid steel conduit?

A. It does; yes, sir.

Q. Well, you had better take this memorandum, then, and read the trade names.

A. Clifton Conduit Company, "Clifton Black" and "Clifton White."

Cohoes Rolling Mill, "Mohawk Indian Black" and "Mohawk Hot Galvanized."

Enameled Metals Company: The three different types are called "Pittsburgh Standard" with the addition of the type sold.

Fretz-Moon: "Enamelite" and "Galvite."

Garland: "Loricated," "Galvaduct."
General Electric: "G. E. Black" and "G. E. White."
The Laclede merely publish their name.
Clayton Mark: "Enamelkote," "Galvakote," and "Hotkote." That is spelled "k-o-t-e" so they can trademark it.
National Electric Products: "Economy," "Sherarduct," and "Xduct." That is just the letter "X" duct.
Spang Chalfant: "Central Black," "Cenlaco."
2053 The Steelduct Company merely publish the words "Steelduct" with the letters "SD" and the name of the particular type.
Triangle does the same.
Walker does the same.
Trial Examiner Norwood: That is, the Triangle has the letter "T"?
The Witness: No. They have the word "Triangle," then "Triangle Hot Galvanized," "Triangle Enameled."
Youngstown Sheet & Tube Company: "Buckeye," with the type of conduit listed below.
M. B. Austin: "American" with the type listed below.

By Mr. Stewart:

Q. I show you Respondents' Exhibit 30, for identification, which purports to be a map, and ask you to look at it and tell us whether or not that is an approximately correct pictorial representation of the location of the various plants about which you formerly testified?
A. You mean as of today?

By Mr. Stewart:

Q. Yes.
A. There have been other conduit plants in the
2054 country that have gone out of business.
Q. No, but I am talking about the condition today. Is that—
A. That appears to be correct.
Mr. Stewart: I offer this in evidence.
Mr. MacIntyre: That is No. 30?
Mr. Stewart: Yes.
Mr. MacIntyre: I would like to ask a few questions, if I may.
Mr. Stewart: Yes. Go ahead.
Trial Examiner Norwood: Go ahead.

Examination on Voir Dire by Mr. MacIntyre.

Q. Do you know, Major, when this was prepared?
A. I haven't any idea.
Q. Do you know who prepared it?
A. I do not. I saw it for the first time about 15 minutes ago.
Q. In other words, the first time you saw it counsel was handing it to you or showing it to you?
A. I saw it for a few minutes before we—during recess when somebody showed it to me and asked me if that was a correct map.
Q. What do you know about the figures of capacity that appear in the lower righthand corner?
2055 A. I know nothing except my own company.
Q. Is that correct as to your company?
A. That is correct as to our company.
Q. Can you vouch for any showing that is in the lower righthand corner as to the capacity or production on the part of any company other than your own?
A. I cannot.
Q. Can you vouch for the showing indicated there as to the manufacturer of any conduit at Indiana Harbor or the capacity there to produce?
A. Well, I see there is a plant located here.
Q. Do you know whether or not it is producing conduit?
A. Today?
Q. Yes.
A. I do not.
Q. Do you know when it last produced conduit?
A. Do I know when it last produced conduit? Only as a matter of hearsay. I understand they produce again today, but I can't testify to that as a matter of my own knowledge. I am led to believe that they are, but I do not know.
Q. That is hearsay, too, isn't it?
A. Yes.
Mr. MacIntyre: I move to strike the statement of the witness that they are producing there, or have been, because he has clearly indicated that he does not
2056 know, and also—
The Witness: Pardon me, Mr. MacIntyre. I do know that they produced conduit at Indiana Harbor at one time.

By Mr. MacIntyre:

Q. How long ago?

A. Oh, I would say 10, 12 years ago.

Q. But you do not know of anything since then?

A. Other than that I understand they are doing it now, but I have not been out there so I do not know.

Mr. MacIntyre: Well, as to this map, if Your Honor please, I make no objection to it, except to the showing made in the last line, a little square in the lower righthand corner which has to do with Indiana Harbor, Ind., Youngstown Sheet & Tube Company, 200. I ask that that be stricken, and if it is done I offer no objection to the map.

Mr. Stewart: Well, I will accept that qualification. We will follow it up by proof from Youngstown that that is a fact.

Trial Examiner Norwood: Yes.

Mr. Robison: He is asking that something be stricken in the map.

Trial Examiner Norwood: We will exclude the points raised there from consideration in connection with this until further evidence is produced.

Mr. Stewart: That is quite all right.

2057 Trial Examiner Norwood: With that condition, the Respondents' Exhibit—

Mr. MacIntyre: Just a moment.

If I may, I would also ask that the offer not show what is referred to in that last line, at Indiana Harbor, until further proof is brought in.

Mr. Stewart: That is quite all right.

Trial Examiner Norwood: That is understood.

Mr. Stewart: That is quite all right.

Trial Examiner Norwood: In other words, the exhibit is not received to show what the Indiana Harbor mill is producing.

Mr. Stewart: Yes, until further proof.

Trial Examiner Norwood: And further proof may be offered of that.

With that understanding, Respondents' Exhibit 30 is received in evidence.

RESPONDENT'S EXHIBIT NO. 30, was offered and received in evidence.

Direct Examination (Continued) by Mr. Stewart.

Q. Major Quinn—

Mr. Stewart: Mark this, please.

(The document referred to was marked for identi-
2058 fication "Respondents' Exhibit No. 31.")

By Mr. Stewart:

Q. Major Quinn, will you refer to Exhibit No. 29, and I now show you Exhibit 31, for identification, and ask you the difference between those two.

First, tell me what the documents are and then tell me what the difference between those two is.

A. No. 29 is the industry standard for enameled conduit. No. 31 in the industry standard for zinc-finished conduit. And, as I have already testified, this serves merely a further exemplification of the underwriters' requirements so that the ordinary layman will know what he is getting in the product that is produced by a conduit manufacturer. It is approved by the American Standards Association, I think it is called, and then it becomes part of the standards records. You see here in the corner are the references.

Q. "A. I. A." file; is that what it means?

A. Uh-huh.

Q. May I inquire as to whether the A. I. A. does not mean American Institute of Architects?

A. That A. I. A. does mean American Institute of Architects, but it is approved by the American Standards Association before it goes to the architects' file.

Q. I see.

Mr. Stewart: I offer those two documents in evi-
2059 dence.

Mr. MacIntyre: I would like to ask the witness a question or two about them.

Trial Examiner Norwood: Proceed.

Examination on Voir Dire by Mr. MacIntyre.

Q. Do you know who prepared these documents, Respondents' Exhibits, for identification, 29 and 31?

A. They were—the information was gathered from the different manufacturers by Mr. A. Penn Denton, who was employed by the Rigid Steel Conduit Association as an engineer.

Q. And he prepared these at the time that he was employed by the Rigid Steel Conduit Association?

A. That is correct.

Q. And published them as and for the Rigid Steel Conduit Association?

A. Yes, it was published for this Association.

Q. As of when? As of the dates shown on there?

A. That would strike me as the correct dates.

Q. And from information that was secured from the manufacturers, the members of the Conduit Association?

A. That is correct.

Q. And now, I believe you said as to 29 in your answer to a question of Mr. Stewart a while ago, that it sets forth an explanation but not requirements of the Underwriters Laboratory. Is that your statement

2060 also as to No. 31?

A. If I stated so, I do not recall just the way you are putting it. I said that you took the Underwriters Laboratories' requirements as the basis, and then these standards are drawn from that.

Q. Now, is it your testimony that these things set forth nothing but what Underwriters Laboratories' standards set for them?

A. They go beyond the underwriters' standards, because the underwriters' standards do not go into the question of threads and various other features which is necessary for us to put in as enlightenment to the box manufacturers and the various other concerns.

Q. And where did the material come from that is in there that has no relation whatever to any underwriters' standard?

A. Other manufacturers.

Q. Members of the Rigid Steel Conduit Association?

A. Yes, that is correct.

Q. Can you indicate to us what portion of the material included in these two exhibits fall in that last class?

A. If you will give me the specifications of the Underwriters Laboratories and let me have some time I can.

Q. Can you do it without having those documents?

A. No, I cannot. The Underwriters Laboratories publish regular specifications.

2061 Mr. MacIntyre: Off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: If Your Honor please, in view of the last statement of the witness, if it is the understanding of counsel for the Respondents that they will supply me with Underwriters' specifications, or a written statement of them so that I may use them on cross-examination of this witness, at that time to have him designate what he has said in his last statement he could designate as to these two, then I offer no objection to the receipt of these two exhibits in evidence.

Trial Examiner Norwood: As I understand it, the counsel will furnish the document?

Mr. Stewart: I beg your pardon?

Trial Examiner Norwood: Read it.

(Last statement of the Examiner read.)

Mr. Stewart: That is correct.

Trial Examiner Norwood: The exhibits are received in evidence.

RESPONDENT'S EXHIBITS NOS. 29 and 31, were offered and received in evidence.

The Witness: I do not know whether there is one 2062 in Washington or not.

Mr. Stewart: We can get one.

The Witness: Oh, yes. I can get one in Pittsburgh, but I hope I am not on the stand that long.

Mr. Stewart: Well, Mr. MacIntyre wants to ask you some questions about it, and we will give him that chance.

Trial Examiner Norwood: Proceed.

Direct Examination (Continued) by Mr. Stewart.

Q. Now, Major Quinn, will you give us in a very general way the markets in which conduit is sold, and particularly an approximation of the relative amount of conduit which is sold in the particular markets.

Mr. MacIntyre: I object to that question because it obviously calls for speculation and a guess on the part of this man. He can't know what each of the other manufacturers sells in, for example, the New York market or the Philadelphia market. He knows what he sells. I have no objection to him telling us what he sells in those markets.

If there is any doubt in Your Honor's mind as to the witness' knowledge on that point, I would like to ask him

a question on voir dire to show that my belief is well founded.

Trial Examiner Norwood: Read the question.

(Question read.)

2063 Trial Examiner Norwood: Can you testify of your own knowledge with respect to that?

The Witness: Only with respect to our own company.

Trial Examiner Norwood: Yes.

Well, you may answer, then, with respect to your own company.

Mr. Stewart: I will break the question up and ask the first part of the question first, as to the markets in which conduit is sold.

Trial Examiner Norwood: In which he sells conduit; is that what the counsel wants to ask.

Mr. Stewart: Yes.

Trial Examiner Norwood: And the approximate amount which his company sells.

The Witness: Conduit is sold in the entire continental United States and its possessions. It is sold for export in South America, and the West Indies, and the Orient. Some is sold in Canada. Some is sold in Mexico.

Mr. Stewart: All right.

By Mr. Stewart:

Q. Now, based on your experience in the business of 20 years—22 years, as I understood you, do you have an idea as to approximately the amount of conduit which is sold in the different markets in the United States?

A. Well, how shall I divide that? You do not 2064 want me to give it town by town?

Q. No. Take the metropolitan centers first, New York, Chicago, Philadelphia.

Mr. MacIntyre: We are here for factual information, and not what his idea might be. Consequently, I object to the last question, on the same ground that I objected to the previous question.

The witness, in response to your Honor's question, demonstrated that I was correct, that he does not know, despite his experience, what these other markets take in the form of conduit from other manufacturers. He only knows what they take from him.

Trial Examiner Norwood: But is there any harm in giving us an estimate of these sales in these territories

based on his experience here as a member of this industry for a good many years?

Mr. MacIntyre: There is, if Your Honor please, considerable harm that can come up, because that leads us directly into one of the vital issues in this case, and we should not speculate upon that particular factual point. We should have the evidence if it is to be put into the record—

Trial Examiner Norwood: Now, let us see—

Mr. MacIntyre: —in a factual and straightforward manner, rather than by guess and speculation.

Trial Examiner Norwood: What vital issue did you
2065 have in mind?

Mr. MacIntyre: I did not understand you.

Trial Examiner Norwood: What vital issue did you have in mind?

Mr. MacIntyre: The one that goes to the point that none of these manufacturers ships into a market nearer the location of somebody else's mill conduit that could be supplied by that mill located nearer that market.

Trial Examiner Norwood: Well, I do not think this goes into that.

Mr. MacIntyre: When this man tells us that that market, if he speculates in that direction, I do not know in what direction he is likely to speculate and guess, that that market around that man's mill can take and requires, for example, four or five times more than that man produces, or might speculate that it takes only one-half of what that man produces, it leads us into a compilation of uncertainties as to what the facts are, and I just do not believe that it should be allowed.

Trial Examiner Norwood: I think this witness may give us the figures showing the sales and also tell us the territory in which his company sells, and we may later develop these totals, rather than take an estimate. I can't see where this other is going to lead us, so I shall sustain the
objection to the general question, and the counsel may
2066 ask one with respect to the witness' particular company, or any other companies about which he has exact knowledge.

By Mr. Stewart:

Q. Major Quinn, are you familiar with the amount of conduit which has been sold in the United States, let us say, beginning in the year 1924 up to January 1, 1941?

A. You mean by the entire industry?

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Q. By the entire industry.
A. Yes, I am.
Q. You have those figures?
A. Yes.
Q. Will you give them to us, please?
A. (The witness produces a document.)
Q. Will you read them year by year, please.
A. You mean just the total?
Q. Just the total.

Trial Examiner Norwood: Well, now, did you make those figures? Where did you get them?

The Witness: These figures come from the secretary of the associations we may have been members of from time to time. They gather the confidential information from the members, and then they simply send it out to us, the total of the industry for the month. This does not deal with companies; it only deals with the total of the industry, and those figures are compiled by people in position
2067 have the accurate knowledge of the tonnage.

Mr. MacIntyre: In view of the statement made by the witness, I ask that the papers from which he is giving the information be marked for identification.

Mr. Stewart: I haven't the slightest objection.

Mr. MacIntyre: So that we will have them available as the need may arise.

Trial Examiner Norwood: Mark them.

The Witness: Well, these happen to be by our own company.

Mr. Stewart: Well, I will give you the same thing.

The Witness: I have no objection to your taking this if you will give me a copy of it.

Mr. MacIntyre: That will be all right.

Mr. Stewart: Well, we can—

The Witness: If you will have it copied and let me have it back.

(Further discussion off the record.)

(The document referred to was marked for identification "Respondents' Exhibit No. 32-A, 32-B, 32-C, and 32-D.")

By Mr. Stewart:

Q. Major Quinn, I show you Respondents' Exhibit 32-A, B, C, and D, for identification, and ask you what the documents contain.

2068 A. This is a memorandum of the production by month and by year that I have had my own secretary

keep over the period of years for the information we use in our own company.

Q. And beginning what year?

A. It begins with 1924, and is up to and including September, 1941.

Mr. Stewart: I offer the documents in evidence.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: May I see it?

Mr. Stewart: Yes (handing the document to Mr. MacIntyre).

We will furnish you with a photostat of that, Mr. MacIntyre.

Mr. MacIntyre: I would like to ask the witness a question or two about the document.

Trial Examiner Norwood: Go ahead.

Examination on Voir Dire by Mr. MacIntyre.

Q. There is, Major Quinn, on this—for example, on this Respondents' Exhibit, for identification, 32-B, opposite the abbreviation for the different methods, a figure—take December, 1937, for example, a figure of 2108, and another one of 5335, and then opposite the last 7473. What is the meaning of those three figures?

A. The 2108 is the enameled conduit; the 5335 is 2069 the galvanized conduit; and the 7443 is the sum of those two.

Q. The sum of those two as to what?

A. That is the total amount of conduit produced in the United States for the month of December, 1937.

Q. How do you know that it is the total of conduit in those two breakdowns produced in the United States during that particular month?

A. We were all members of the Rigid Steel Conduit Association. Our dues were paid on the basis of our production. Every month the manufacturers sent in to the secretary, who was not connected with any company, but who was a paid individual, the report of their tonnage, and after he had obtained them from every source he added them together and sent us back a statement showing that all of the industries, all of the manufacturers, had reported that this was the total amount of sales.

Q. For the conduit industry?

A. For the conduit industry. And then he in turn at

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the end of the year assessed us on the basis of our proportion of the total industry.

Q. And none of that—

Mr. Stewart: Total industry tonnage.

The Witness: Yes.

By Mr. MacIntyre:

Q. And none of that shown on those sheets for the
2070 years previous to the issuance of the complaint in this case were placed on those sheets since the complaint has been issued?

A. This has been in my hands—this has been in my own desk, with the exception of this page (indicating), which was lost in the flood of 1936, and this is a copy of a duplicate set that the president of our company keeps.

Q. That covers the years 1924-1928.

A. 1924-1928. The balance have been in my personal possession from the time they were inserted on there, which was within 60 days of the month shown.

Q. And that means before the complaint was issued in this case?

A. That is right.

Mr. MacIntyre: I have no objection to the offer.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBITS NOS. 32-A, 32-B, 32-C, and 32-D were offered and received in evidence.

Direct Examination (Continued) by Mr. Stewart.

Q. Major Quinn, in connection with your duties as vice-president in charge of sales of enameled conduit, was it part of that duty for you to ascertain from all possible sources the relative amount of conduits sold throughout the United States in different centers?

2071 A. It was, as near as we could obtain that information.

Q. Well, will you state the manner in which you obtained such information?

A. The question of buildings, building contracts, you obtain from F. W. Dodge, who are a national organization that publishes all data concerning building contracts. The information as to those sales from the jobber stocks other than on building contracts, you can only get that from the word of your representative in the field as to the approxi-

mate amount sold in his territory. I know of no way, no way that you could obtain that information without asking all of the manufacturers to analyze their sales for each territory and adding that together, which would be a very, very big task.

Q. Well, now, based on your sources of information such as you have described, have you been enabled in your years of experience in the conduit business to arrive at an approximate figure as to the amount of conduit used in the respective conduit markets of the country? Just "yes" or "no." Have you?

Mr. MacIntyre: I object. The witness has already answered that question by telling us that he can't do it, and telling us why he can't.

Mr. Stewart: He didn't say that.

Mr. MacIntyre: I ask that the last answer of the witness be read back. He can tell you that—

Trial Examiner Norwood: Doesn't that paper you
2072 just put in show you that total?

Mr. Stewart: It shows you the total, but it doesn't show you the amount of conduit sold in the particular markets, for example, how much of the conduit is sold in New York City, how much is sold in Chicago, how much is sold somewhere else. Now, I submit—

Trial Examiner Norwood: Does he have a record to show that?

Mr. Stewart: He has said from the building sales and from the reports he gets from his representatives in the field that that is the way he gets the approximate figure as to conduit sold in these various centers. Now, as I understand, he has said if you want accurate figures you would have to get all the figures, add them together, and analyze them, but I am asking him to give the business man's approximation as to conduit which is sold in these respective business centers, and I submit that is all we are interested in here. We are not interested in exact figures.

Mr. MacIntyre: The witness has told us that as to those sales sold from stocks of manufacturers or wholesalers that he is now relying upon reports from salesmen as to—

Mr. Stewart: His own—

Mr. MacIntyre: —what they amount to. Well, even if he is now allowed to guess as to what the salesmen reported,

he would also be guessing—be allowed to guess as to
2073 what they guessed, because as to some of these wholesalers they have not given to each of the salesmen of

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the Enameled Metals Company directly and through that source all of the information about all of their sales from stocks.

Trial Examiner Norwood: I think that if you are trying to establish that the portion of this total production covers the sales to places like New York and Philadelphia, that is not an easy question. I see that. But I don't think that just an estimate of one person should be received if it is important that accurate information be considered in this case.

I am going to sustain the objection to this question and ask the counsel if they can't get some data and maybe they can agree on something here and you can bring it up later, because evidently this witness can't give us the accurate figures here.

Mr. Stewart: That is right.

Trial Examiner Norwood: And I think that you can.

Mr. MacIntyre: I would certainly be glad to agree to anything that is accurate and show what the facts are on it.

Mr. Stewart: Never mind. We will go in the back door. We can't go in the front door.

By Mr. Stewart:

Q. Major Quinn, what percentage of your conduit 2074 is sold in the New York market?

A. About 12 to 15 percent.

Q. And what percentage is sold in, let us say, the Coast market?

A. About 15 percent.

Q. Give us the other markets and the approximate percentages of the sales by your company.

A. In the so-called Chicago market it is 5 percent. In and around Buffalo and Cleveland there is 5. In the South, there is 15. In the Mid-West—and that goes all the way from Pittsburgh to Denver—there is 25 percent. And the balance is in scattering sections of the country.

Q. Now, while we are on percentages of sales, approximately what percentage of your conduit is sold f.o.b. mill?

A. Our sales are from 15 to 20 percent f.o.b. mill.

Q. Now, Major Quinn, based on your experience in the conduit business, what would you say as to the relation between the fluctuation in building activities and the fluctuation in the sales of conduit?

A. Well, they are a direct relation because conduit is essentially only used in large buildings, and it is when the large industrial plants or the large city buildings are going up the conduit market is very busy, and when the building operations cease the conduit market goes down, as exemplified by these figures of—in 1933 the entire
2075 industry only sold 61,496 tons.

Q. All right. Now, take the early part of 1937, and what relation was there between the activities—business generally and the sales of conduit, say, the first five or six months in 1937?

A. There was a—there was a moderate boom in the early part of 1937 in business generally, not only in the building business but the entire business activities of the country, and it looked like the country was coming out of its slump, but it fell off sadly in the last half of the year and very marked, but up to—as I recall, it ran pretty well up into the late summer before it started to taper off and tapered off very fast and continued through '38 in the same condition.

Q. Do you recall what relation there was between the announcement by the Federal Government that it would withdraw its spending program and business activities in 1937?

Mr. MacIntyre: I object.

Mr. Stewart: He knows what his business—

Mr. MacIntyre: We are certainly getting far afield. I feel that the questions immediately preceding were objectionable, but we have gone so far now that it just can't go by without objection.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

2076 A. There was a very marked decline in business in the fall of 1937, and all during '38, which was a direct result of the reported statements of prominent officials in Washington as to the activity of the Government.

By Mr. Stewart:

Q. Now, Major Quinn, you have been quite active in the Association activities of the various organizations of conduit manufacturers; have you not?

A. That is correct.

Q. Now, what was your first connection with any organization activity?

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A. My first connection was in 1920 when it was then—the Rigid Steel Conduit Association was then a section of the A. S. M. E., Association—

Q. Now, what is that, translated?

A. Associated—no; it is A. M. S. E., Associated Manufacturers—A. M. E. S., Associated Manufacturers of Electrical Supplies.

Q. Now, what was the nature of that organization and your duties in connection therewith?

A. Well, would you like a history of the conduit industry?

Q. Yes. I want a history of it. Tell us in your own words.

A. In 1915 there was a product brought out that
2077 was called concentric wiring. At that time there was no association of any nature in the conduit industry, and at that time there was comparatively few manufacturers—six, I believe—of conduit. They formed together and hired an attorney to fight the adoption of concentric wiring which is, in its present-day garb, bare neutral. As a result of that association—I mean association with each other, the A. S. M. E.—A. M. E. S., was formed. The A. M. E. S. was actually formed as a result of the original conduit group. Of the original group were—Mr. Corrigan was chairman. He at that time was vice-president of the National Electric Products, and Mr. Patterson, the president of our company, was secretary and treasurer. They had no dues except that whenever they had to pay for the services of this attorney they were all assessed the same amount. They would be—the treasurer would send out a request for $50 or $100, and there were no statistics maintained, or—

Q. Well, primarily, as I understand you, the organization was for the purpose of combatting the use of—

A. Concentric wiring.

Q. Concentric wiring, in competition with—

A. With conduit.

Q. All right.

Now, what was the next step?

A. Then the A. M. E. S. was formed, which was a group of practically roughing-in material manufacturers.

2078 Q. Now, when you say "roughing-in material," what do you mean?

A. That is the material that goes into the construction of a building, and it is the material that goes in first. That

is the wire, the conduit, the boxes, the outlet boxes, the panel boards, and such. The other, the lighting, fixtures, and like that are entirely different. The roughing-in material is what goes in at the time the building is being constructed.

Q. Does that include conduit?

A. That includes conduit.

That society went along until the spring of 1926 when at a meeting at Hot Springs it was decided to merge with the Electric Club and one or two other associations which represented different branches of the electrical industry. One, I think the Electric Club, as I recall, was a power group, and there were other small groups as representing some small part of the electrical industry. They were merged as of May 1, 1926, into the National Electrical Manufacturers Association, and the rigid steel conduit section of A. M. E. S. became the rigid conduit section of NEMA, and they continued as a member of NEMA until 1934. In 1927 came the introduction of electrical metallic tubing, which they brought into the market as thin-wall conduit; and that was another direct attack on conduit.

You see, conduit being the most expensive and the
2079 safest method of installing electrical installations, it has always been the subject of attack by the utilities and others who would like to cheapen the cost of installation. It has also been the most adaptable from the standpoint of labor in installing, and, as you know, the I. B. E. W. is a factor in the installation electrical goods in this country.

Q. And that has been particularly true in New York City; has it not?

A. It is particularly true in New York City.

Q. Now, the I. B. E. W. sounds sort of sinister. What is that?

A. International Brotherhood of Electrical Workers. In the early spring of 1927 the subject of thin-wall conduit received the attention of the manufacturers. We appealed to NEMA to fight the battle. NEMA could not assume the job because they take the position that they cannot fight any particular section's commercial battles. It was necessary for the conduit manufacturers to form what they called the conduit trade extension committee, and they employed the services of an executive secretary. The ordinary method of attack on any product is through the field, as it

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is called, the manufacturer of some new product going into the field and trying to interest some electrical inspectors in the adoption of their material.

Mr. MacIntyre: Just a moment. Just a moment. I object to the last portion of the statement by the wit-
2080 ness and ask that it be stricken. We are getting into speculation now as to what generally may or may not be done, or what probably might be done. Let us try to stick to what is done by these Respondents as raised by the issues in the complaint.

May we have the last portion of that—

Trial Examiner Norwood: Now, he may give us the background here, but it should not be speculative.

Mr. Stewart: Well, he is not speculating. He is telling exactly how the fellow who brings out the new product undertakes to throw out the rigid steel conduit. That is not speculation.

Trial Examiner Norwood: Read the last sentence or two.

Mr. Stewart: Nothing speculative about it.

Trial Examiner Norwood: Read the last sentence.

(Last sentence in previous answer read.)

Trial Examiner Norwood: The objection is overruled, and we will now recess until 2 o'clock.

(Whereupon, at 12:20 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day.)

2081 Afternoon Session.

2 P. M.

Trial Examiner Norwood: Are you ready to go ahead, Mr. Stewart?

Mr. Stewart: Yes, sir.

Trial Examiner Norwood: The hearing will come to order.

L. R. QUINN thereupon resumed the stand and testified further as follows:

Direct Examination by Mr. Stewart (Continued).

Q. Mr. Quinn, as I recall it, when we adjourned you were testifying about the history of these various conduit associations, and you had reached the point of the appointment of the Trade Extension Committee in the N. E. M. A.

A. That is correct.

Q. Now, will you continue from that point, describing the activities of the Trade Extension Committee.

A. Well, the reason the Trade Extension Committee was appointed was that three or four years before a non-metallic sheet cable had been introduced, and it had been necessary for the old section of NEMA to oppose that at the hearings of the Electrical Committee, and so forth, and they had been more or less successful, so that brought out the question of this conduit trade extension work and
2082 the necessity of having a high class man to handle it, because the new metal, the thin-wall conduit, was being brought out by Steel & Tubes, Inc., a subsidiary of Republic Steel Corporation—

Q. May I interrupt? Is that one of the Respondents here?

A. Yes.

—and they were spending a large sum of money in the field to gain the temporary approval of this material, and it was necessary to appear before the N. F. P. A.—that is the National Fire Prevention Association—at Atlantic City, and it required the services of somebody to go around the country and see the city inspectors, because the Electrical Committee of the N. F. P. A. is made up of so many votes for the inspectors, so many votes for the fire chiefs, so many votes for the manufacturers, so many votes for the insurance interests, and so forth, and it takes a certain majority of that committee before a new product may be put into the service, and the Association engaged the services of Mr. Sicard as executive secretary, and it was a long drawn out and quite expensive fight, and instead of the material being called "thin-wall conduit," one of the compromise effected was that it be called electrical metallic tubing, and after the Trade Extension Committee had apparently been successful in their combat before the Electrical Committee it was then decided that a permanent organization would be maintained for the betterment of conduit and its sale; in other words, not as to price but as to the extension
2083 of the field to which conduit could be and should be used.

Now, one of the things that we did was to employ the services of an advertising firm in New York—and I can't recall their names, but they were up on Madison Avenue—and they prepared some booklets that—I remember one,

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as I recall, had pink and the other had blue on its cover sheets—to be sent out to all the architects in the country to show them the advantages of rigid conduit over the other products.

Well, when the N. R. A. came along it then became a question of whether rigid conduit is electrical or steel. A part of the conduit industry is all electrical outside of conduit; part is all steel, outside of the conduit; and some of it makes only conduit. It was felt that we should come under the Steel Code, but we were ruled—it was ruled that we come under the Electrical Code. But we withdrew from NEMA at that time—I think it was in 1934—and we formed the Rigid Steel Conduit Association, and it had its by-laws and its purposes.

Q. May I ask as to what the reason was for withdrawing from NEMA?

A. Well, there was more or less confusion among the manufacturers. NEMA is preponderantly electrical, and in their approach to the subject it was sometimes a little bit in opposition to the desires of those who were principally steel.

2084 The principal objection of our company, one of the reasons we voted for the withdrawal from NEMA, was the fact that you could not do anything in NEMA in the way of advertising, sales promotion, technical, or anything else without submitting it to the approval of the board of directors of NEMA. And, likewise, if you had any employees, like Mr. Penn Denton, who was a consulting engineer, it was necessary that he come under the managing director of NEMA. And when you consider that electrical metallic tubing was at that time a member of NEMA, armored cable, BX, so-called—they were members off and on of NEMA—different forms of service entrance cables, and so forth—all those are sections of NEMA, or members of NEMA—and NEMA took the position that they could not allow one section to do any promotional work that might affect the other unless it was passed upon by the board of directors.

Q. Now, were these products you spoke of in your previous answer in competition with each other?

A. Oh, yes, and with us.

And so it was considered by the majority of the manufacturers to be desirable to maintain their own association, and that association continued until the passage of the

Robinson-Patman law, when there were several members of the association that submitted their resignations or had notified the association that they would retire at the
2085 end of their year, and the association was just about on its last legs.

Well, then, when the Robinson-Patman law was passed it again became evident that we had to have somebody to direct us, that was legally trained, that could tell us our duties under the Robinson-Patman law, and it was to guide us in the question of the Robinson-Patman law that the services of the Organization Service was obtained, and they continued until—I think they continued until '38 or '39, and when the expense—during that time we had two or three very bad years in the conduit business. The expense was more than the association felt they could stand, and they then went on with the technical work exclusively under Mr. Penn Denton until the spring of, I guess it was, '40, and the association was finally disbanded, I think, as I recall, the 31st of May in '40.

Q. And what was the reason for that?

A. Simply because there had been several members, some of them very large members, that refused to contribute any longer to the support of the technical work, and those that were left could not afford to maintain the organization with the consulting engineer.

Q. Now, directing your attention to the period of the N. R. A., what was done by the association after the Supreme Court of the United States declared the N. R. A. unconstitutional?

A. You mean any actions they took?

Q. Yes. What did you do?

2086 A. I do not recall that any actions were taken. It, of course, undid all of the work that had been done on the supplemental code for rigid conduit, and, as a matter of fact, the association just struggled along more or less aimlessly and without much leadership.

Q. Now, you spoke of the method by which the section was governed in NEMA. I show you a document—excuse me. I have a bad habit of starting a question without having the exhibit marked.

(A document was thereupon marked for identification "Respondents' Exhibit No. 33.")

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By Mr. Stewart:

Q. (Continuing.) —marked Respondents' Exhibit 33, for identification, ask you to look at it, and tell us whether you recognize it.

Mr. Stewart: I am sorry. This is part of it. We will have to have that marked separately.

Mark that 33-B.

Trial Examiner Norwood: Mark it separately with a different number.

(The document referred to was marked for identification "Respondents' Exhibit No. 34.")

Mr. Stewart: I would like to have my former question amended so as to read Exhibits 33 and 34.

The Witness: This is the—I suppose you would
2087 call it a sort of a bible of procedure that NEMA brought out for the conduct of the sections, the members.

By Mr. Stewart:

Q. Did that govern the conduit section of NEMA?

A. Yes.

Trial Examiner Norwood: You mean that was used after the N. R. A.?

The Witness: No. This is before the N. R. A.

Trial Examiner Norwood: Oh.

The Witness: This is 1930.

Trial Examiner Norwood: Thank you.

By Mr. Stewart:

Q. Well, to make the record clear, I think it already shows that the conduit section of NEMA left NEMA in August, 1934; is that correct?

A. That is my recollection.

Q. And then you formed the Rigid Steel Conduit Association on the same date that you resigned from NEMA?

A. Well, we had more or less of a conduit association from the days of the Trade Extension Committee, but it was operated as part of the section, and then when we were through with NEMA, why, it became an association of its own.

(Mr. Stewart hands documents to Mr. MacIntyre.)

Mr. Stewart: I was wrong about that date. It is April, not August.

2088 Trial Examiner Norwood: Proceed.

Any objection?

Mr. Stewart: I offer Exhibits 33 and 34 in evidence.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: No.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBITS NOS. 33 and 44 were offered and received in evidence.

By Mr. Stewart:

Q. Major Quinn, I directed your attention a moment ago to the period subsequent to the declaration by the Supreme Court of the unconstitutionality of the N. R. A. in the Schechter case.

I show you what purports to be a photostatic copy of the minutes of the Rigid Steel Conduit Association of June 13, 1935, ask you to look at it, and first tell us whether you were present at the meeting, if you can remember by refreshing your recollection by reference to that document.

A. I was a member.

Q. Do you remember the meeting?

A. I want to read it first.

These seem to be the minutes.

2089 Q. Well, now, directing your attention to the paragraph in what purports to be the copy of the minutes with reference to the declaration by the chairman of the meeting as to the unconstitutionality of the N. R. A., do you recall that subject being mentioned in that meeting?

A. I do, yes.

Q. Do you recall that the chairman, whoever it was, made that statement as set forth in that minute?

A. I assume that the chairman did. Whoever—somebody at the meeting brought up the question of N. R. A., and it would be the natural thing for the chairman to do. I can't at this late date definitely state that the chairman did, but it was the subject of discussion at that meeting, because I was a member of the board of directors and I remember the subject being discussed.

Trial Examiner Norwood: Do you remember the statement there?

The Witness: Yes.

By Mr. Stewart:

Q. Now, that paragraph of the minutes refers to a program which was to be prepared for the future operation of the Rigid Steel Conduit Association in the light

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of the unconstitutionality of the N. R. A. Do you remember that subject being discussed?

A. The subject was discussed at that time and
2090 several times in the future, but no program was ever prepared that I ever saw.

Q. Well, so far as your company, at least, was concerned, after the N. R. A. was declared unconstitutional, did you follow any of the practices that you had followed under the N. R. A.?

A. In what way do you mean? What practices?

Q. Well, let us say, filing prices with anybody.

A. No. We discontinued filing prices.

Q. Now, Major Quinn, what secretaries did the conduit section of NEMA have and the Rigid Steel Conduit Association?

A. You mean the executive secretaries?

Q. Yes; executive secretaries.

A. Mr. Sicard, he served, I would say, up to about '30. Then there was a short lapse, then Francis Nielsen, a New York attorney, served as secretary. I don't believe Mr. Nielsen served more than a year and a half. Maybe not quite that long. Then there was another lapse, and I know when I was elected chairman of the Section in 1932 there was no secretary. And then it went along for maybe a year or so and then the Association, after we had become independent of NEMA, again reemployed Mr. Sicard, and he served, I would say, possibly from '34 until early in '36, and then—then there—'36 was just about the low ebb in the morale of the conduit industry. That was the time when the card 72 was published, which was way below the cost of any manufacturer, including the one who was
2091 supposed to be the cheapest manufacturer of the group, and the morale was very, very low, and that was just about the time that the Robinson-Patman law was passed. Well, a layman looking at the Robinson-Patman law, if it had been treated as it appeared, it would almost have been Manna from Heaven for a manufacturer in the maintenance of his business, and that was when Blake was employed to tell us what we could and could not do legally under the Robinson-Patman law, and then Blake's organization became the secretary and continued—not entitled secretary. They were the—Mr. Blake became president of the Association, and Mr. Booth became executive secretary.

Q. Well, did Mr. Blake become—

Mr. MacIntyre: Now, just a moment.

I move to strike that portion of the witness' answer which attempts to speculate on what is the cost of manufacturing conduit, and whether or not card 72 represented cost in the industry, or above cost. It doesn't go to any of the issues, and it is incompetent also because the witness can be shown, I am sure, before the cross-examination is completed, if this is not stricken, that he doesn't know the cost of everybody in the industry.

Mr. Stewart: Well, you go ahead and cross-examine. I will give you a chance now.

Mr. MacIntyre: Well, I move to strike it now so we don't need to prepare for any cross-examination on that point.

2092 Trial Examiner Norwood: This witness has given us the story of his business, and of this industry, and in places he is speaking in general terms, and it has always been our custom to permit the Respondents to do that and not apply strict rules of relevancy to some portions of it which may be necessary to connect it up and to explain it. But in denying this motion I shall state that the part pointed out by the counsel will not be considered as evidence on costs. We are accepting that as his explanation, unless some other evidence on costs is given.

Mr. Stewart: Well, I can assure you, Mr. Examiner, and Mr. MacIntyre, as well, that we are going to offer Mr. Quinn on the matter of cost, because we are going to explain card 72 in the light of Mr. MacIntyre's misconception of why card 72 was issued.

Trial Examiner Norwood: Well, I am not sure that costs are in issue here in any way whatsoever. I just haven't thought through that aspect of it, but I am willing to let that stand and hear that part of his explanation.

Mr. Stewart: Well, I will show that because of the disorderly conditions in the industry, that cards came out below cost. It will certainly negative any agreement because it is not the practice of the industry to give the conduit away.

2093 Trial Examiner Norwood: Well, I shall deny the motion. If that was below cost we will have to show it by exact evidence.

Mr. Stewart: I will get to that. I intend to cover that.

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Trial Examiner Norwood: Yes. Or else there will be no finding based thereon.

Mr. MacIntyre: In other words, the ruling is that this is not evidence of what costs are or whether or not sales at that time were made below cost?

Trial Examiner Norwood: That is true.

Go ahead.

By Mr. Stewart:

Q. Now, Major Quinn, before we get too far away from the subject, I should like to direct your attention again to the subject of the different products manufactured by the different Respondents.

Can you tell us, taking each manufacturer, which one manufactures, let us say, electric metallic tubing, which does not—which manufactures rigid steel conduit? I suppose that all do, as a fact. And which manufactures armored cable and which does not? Can you tell us that?

A. Do you want me to read them off here as they come down the list?

Q. Yes. Take each one.

Mr. MacIntyre: I understand the witness covered 2094 that this morning as to which ones manufactured what product, and what the brand names are.

Mr. Stewart: As I understood, he was talking about conduit. Now, I want to know which ones manufacture armored cable, and which ones do not, for the purpose of showing which ones are in competition with each other on which product.

Mr. MacIntyre: This isn't relevant as to who manufactures them.

Trial Examiner Norwood: It is part of the story here. He is giving us the general story.

Mr. Stewart: I should think, if we show they were in competition with each other, it would go to negative the idea that they were not competitive on conduit.

Trial Examiner Norwood: He may go ahead.

A. The Clifton Conduit Company does not manufacture conduit but does manufacture armored cable.

The Cohoes Rolling Mill makes only conduit.

The Enameled Metals Company makes only conduit, but it sells e. m. t. made by the Youngstown Sheet & Tube Company.

The Fretz-Moon Company make only conduit.

Trial Examiner Norwood: You need not go through it that way. Just go through and point out the ones who do manufacture the cable.

The Witness: General Electric manufactures cable.

2095 By Mr. Stewart:

Q. But wait a minute. You have e. m. t. in there, too.

Trial Examiner Norwood: Yes. Excuse me. Just point those out to us. You need not name the ones who do not produce either one.

The Witness: Oh, I see. All right.

You have Clifton Conduit making armored cable.

General Electric make armored cable.

National Electric Products make armored cable.

Triangle Conduit & Cable make armored cable.

Walker Brothers make armored cable.

The M. B. Austin are a factor in armored cable, because they sell it the same as they do conduit made by another manufacturer.

Q. Take e. m. t.

A. E. m. t. is made by Steel & Tubes, Inc., who are not a manufacturer of conduit, but who are the sales agent of the Fretz-Moon Tube Company. The Youngstown Sheet & Tube Company, the Clayton Mark Company, the National Electric Products, Triangle; the Laclede Steel Company are equipped to make it. I can't tell you whether they ever made any or not, but they are equipped to make it.

Q. Now, which one of the Respondent companies makes material—withdraw that, please.

Which one of the Respondent companies makes
2096 other material which competes with rigid steel conduit?

A. The General Electric, Triangle, National Electric Products. I believe that is all.

Q. Now, to make myself clear, you mean by that, do you, that they make materials other than the ones previously mentioned, which compete with rigid steel conduit?

A. That is correct.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 35-A, 35-B, 35-C, and 36-A and 36-B.")

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By Mr. Stewart:

Q. Major Quinn, I show you Respondents' Exhibit 35-A to C, inclusive, which purports to be a photostatic copy of the minutes of the Rigid Conduit Section of NEMA held on Tuesday, April 24, 1934. I ask you to look at it, tell us whether you presided as chairman, and, if you remember, the contents—or, rather, the statements in the minutes so as to enable you to say whether or not that is a true and correct copy of the minutes?

A. That is—that is a correct copy, and I presided.

Q. You did preside.

Now, does that minute correctly state the action of the Association with reference to its withdrawal from NEMA?

A. It does.

Mr. Stewart: I offer this document in evidence.

2097 Mr. MacIntyre: No objection to the document.

Mr. Stewart: No objection to 35-A to C. No objection to 35-A to C.

Trial Examiner Norwood: Received as marked, Respondents' Exhibit 35-A to C.

RESPONDENT'S EXHIBIT NO. 35-A, 35-B, and 35-C was offered and received in evidence.

By Mr. Stewart:

Q. Now, will you look at Respondents' Exhibit 36-A and B, and tell us whether or not, according to the best of your recollection, those are the minutes of the organization meeting of the Rigid Steel Conduit Association?

A. These are correct minutes of the board of directors' meeting.

Mr. Robison. What is the date of that minute?

Mr. Stewart: April 24, 1934.

Mr. MacIntyre: There is no objection to Respondents' Exhibit 36-A and B.

Mr. Stewart: Offer it in evidence.

Trial Examiner Norwood: Received as marked.

RESPONDENT'S EXHIBIT NO. 36-A and 36-B

2098 was offered and received in evidence.

(There was a short intermission taken.)

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 37-A to 37-E, 38-A, 38-B, 39-A to 39-D, 40-A, 40-B, 41-A, 41-B, 41-C, 42-A, 42-B, 43-A, 43-B, 43-C, 44-A, 44-B, 45-A to 45-G, 46-A, 46-B,

47-A to 47-J, 48-A, 48-B, 49-A to 49-E, 50-A to 50-D, 51-A to 51-G, 52-A to 52-D.")

Trial Examiner Norwood: Are you ready to go ahead? Proceed.

By Mr. Stewart:

Q. Now, Major Quinn, I show you Respondents' Exhibits 37-A to E, inclusive, 38-A and B, 39-A to D, inclusive, 40-A and B, 41-A to C, inclusive, 42-A and B, 43-A to C, inclusive, 44-A and B, 45-A to G, inclusive, 46-A and B, 47-A to J, inclusive, 48-A and B, 49-A to E, inclusive, 50-A to D, inclusive, 51-A to G, inclusive, 52-A to D, inclusive, and ask you if you have looked at the documents.

A. I have.

Q. Do they appear to you to be true and correct copies of the minutes of the Rigid Steel Conduit Association and, where they are so entitled, of the meetings of the board of directors of the Rigid Steel Conduit Association?

2099 A. They are correct.

Mr. Stewart: I offer these documents in evidence (handing exhibits to Mr. MacIntyre).

Mr. MacIntyre: This is quite a group of documents. I would like to ask to be given an opportunity to see what is being offered, and not take the time in the hearing room to do so. I will state any objections I have tomorrow morning.

Trial Examiner Norwood: I shall reserve the ruling, then, and give counsel a chance to look over the papers.

Mr. Stewart: That is agreeable.

Trial Examiner Norwood: If there are some serious objections, I shall have to look over them myself, also.

Do you have two copies of those?

Mr. Stewart: Yes, sir. We can furnish you with an extra copy, if that is what you have in mind.

Trial Examiner Norwood: Yes. Well, we will see about that.

By Mr. Stewart:

Q. I call your attention to Respondents' Exhibit 39-A to D, inclusive, and particularly to item 2, which purports to set forth the recommended policy of the Rigid Steel Conduit Association, ask you to look at it, and ask you whether or not that policy as there expressed was adopted by the Rigid Steel Conduit Association.

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Mr. MacIntyre: Before you answer that, may I
2100 see the documents?

Mr. Stewart: Oh, yes, sure. I am sorry.

A. (After examining the document referred to.) That was adopted.

By Mr. Stewart:

Q. Now, I call your attention to Respondents' Exhibit 40-A and B, and to item 5 therein, with reference to the subject of the elimination of black conduit. Now, will you—

Mr. MacIntyre: What is the number of that?

Mr. Stewart: 40-A and B.

By Mr. Stewart:

Q. Will you state, Major Quinn—

The Witness: Do you want to see this one, Mr. MacIntyre?

Mr. MacIntyre: No.

By Mr. Stewart:

Q. Will you state, Major Quinn, first, for what period of time there has been agitation, if any, from any source to induce the manufacturers to eliminate black conduit. How far back does that go?

Mr. MacIntyre: I object to such leading questions, as to whether somebody was inducing manufacturers to do this.

Trial Examiner Norwood: Well, he has an assumption there, but it is not leading as to the point of the question.

Mr. Stewart: Not at all.

2101 Mr. MacIntyre: I submit that it is, since it raises the question as to who did induce when there is no evidence that anybody induced.

Trial Examiner Norwood: Well, there is an assumption there, yes.

Mr. MacIntyre: Well, we better find out the fact first and then get the basis for the second question.

Mr. Stewart: All right.

Trial Examiner Norwood: Objection sustained.

By Mr. Stewart:

Q. What effort has been made, and by whom, to induce the manufacturers to eliminate the black conduit as a product?

A. I would say off and on for the last—oh, ever since 1929 there has been an interest shown by our distributors to discontinue the manufacture of black enameled conduit, because it entailed the carrying by them of two stocks.

This minute in particular, which is dated September 10, 1935, Respondents' Exhibit 40-A, refers to a letter from the Chicago Wholesalers Association, in which they ask that the black enameled conduit be discontinued. And it was constantly the subject of discussion among the manufacturers, and I believe among the jobbers.

We have been approached directly by the Jobbers Association, the N. E. W. A., asking that we investigate.

2102 And it finally culminated in quite an expensive examination by the Underwriters Laboratories as to whether or not they could rule out black enameled conduit as being inefficient, or unsatisfactory.

Trial Examiner Norwood: Was their preference for the galvanized?

The Witness: Originally all conduit was black enameled, and then the galvanized conduit became a factor, and engineers seemed to prefer the galvanized to the enameled, and it got to a point where 70 percent of the conduit tonnages was black.

For instance, now, in 1924 there was 100,691 black, and only 63,367 galvanized.

Trial Examiner Norwood: Well, the main point was they did not want to carry two stocks.

The Witness: Two stocks.

Trial Examiner Norwood: I see. Thank you.

By Mr. Stewart:

Q. Now, you referred to a survey made by the Underwriters Laboratories.

Mr. Stewart: Mark this, please.

(The document was marked for identification "Respondents' Exhibit No. 53.")

By Mr. Stewart:

Q. I show you Respondents' Exhibit 53, ask you to look at it, and tell us whether or not that is the sur-

2103 vey to which you refer.

A. This is the survey.

Q. And at whose expense was that survey made?

A. At the expense of the Rigid Steel Conduit Association.

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Q. In view of all the agitation, what was the result from the standpoint of whether or not black conduit was eliminated?

A. The underwriters could not order its discontinuance. As a matter of fact, as an individual company, we had always opposed the elimination of black enameled conduit and had stated in open meeting that even though it was ruled out by the underwriters we would continue to make it. And as a result today the Government is ordering the use of black instead of galvanized to save the zinc for other war emergencies. Had the black enameled conduit been eliminated as was requested, and the plant machinery abandoned, I do not know what they would have done right now, because they could not have re-equipped soon enough to make black enameled conduit.

Q. Now, is Exhibit 53 the report which was made by the Underwriters Laboratory to the rigid steel manufacturers on the subject of the elimination of black conduit?

A. And that was also furnished to the Electrical Committee, and to any interested party. That was not a private report to us; that was furnished to anybody
2104 who was interested in the subject, and became the subject of discussion of the Electrical Committee.
2106 By Mr. Stewart:

Q. Now, Major Quinn, I show you Respondents' exhibit 43-A, and ask you to look at it and state
2107 whether or not that refreshes your recollection as to the approximate time the manufacturers of conduit who were members of the Association began to consider their problems arising out of the passage of the Robinson-Patman Act. I just want to know whether that refreshes your recollection as to the date.

A. It does.

Q. When was it the first—the agitation among the manufacturers began on the subject of the application of the Robinson-Patman Act?

Mr. MacIntyre: I object. The question does not call for any material testimony that is relevant to the issues here. This is not a Robinson-Patman case. It is a section 5 case under the Trade Commission Act.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Well, now, the Respondents contend that certain of their activities here were to enable

them to meet the provisions of the Robinson-Patman Act to prevent them from violating it, and you say that these same activities were directed to something else.

Mr. Stewart: That is right. That is as simple as A, B, C.

Trial Examiner Norwood: So I think we will have to permit them to present their side of it. The one might be exclusive of the other, and, on the other hand, it
2108 might not, but I think we shall have to admit it until it is—until it appears that it is logically impotent to meet the issue.

Mr. MacIntyre: It, however, is irrelevant and immaterial to raise as a defense here the fact that Congress at some time passed a law prohibiting price discrimination when the defendants here are charged with cooperatively fixing prices. To go into the matter of the passage of a price discrimination act is no defense to the charge here, because we are not charging that they are violating the Robinson-Patman Act, and whatever that they did here under the guise of attempting to—or the claim of attempting to comply with some law of the Robinson-Patman Act does not excuse them from their combination here of doing so, if they fixed prices, which is the charge before us.

Trial Examiner Norwood: I think those are matters that must be determined from the entire record.

Objection overruled.

The Witness: Would you mind reading that question?

By Mr. Stewart:

Q. The question is, when was it you first began to consider your difficulties arising out of the passage of the Robinson-Patman Act?

A. Immediately after the passage it was apparent to all of us that it would affect our methods of operation to some extent, but how much none of us was able to
2109 determine, and at this meeting in particular a report was made by Mr. Walker as to a hearing he attended in Washington—in New York on that subject. As a matter of fact, it was the result of this discussion that eventually the employment of the Organization Service was culminated.

Q. What reason, other than the problems arising out of the Robinson-Patman Act, were there for the employment of Organization Service Corporation, fundamentally?

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A. Well, you should have—you should have an executive secretary to an association. There are always questions that arise that one manufacturer can't ask a competitor, and, furthermore, there are always subjects that come up that require the attention of the whole industry which if any one manufacturer started to bring forth the chances are the others would figure that he had some—that he desired some particular advantage, whereas when you have a secretary who prepares for a meeting things that should be discussed at the association that—for the betterment of either the standard of quality or the standards for the general business condition, you listen to it with some consideration.

Q. Mr. Quinn, I show you Commission's Exhibit 8-A, directing your attention to the portion of the minutes which refers to the matter of going over a sales agency contract. Do you recall that discussion?

A. Yes, sir.

2110 Q. Now, how long prior to the date of that meeting in November, 1936, had Enameled Metals Company been using the consigned stock method of doing business?

A. Our first consigned stock was in July, 1925.

Q. Now, under the consigned stock method of doing business, who pays the freight?

A. We must pay the freight in order to carry the title to the product. Not only that, we must pay the freight in order to avoid certain taxes in certain States and the question of doing business in the States.

Q. Now, what is the reason for the consigned stock method of doing business, if any, other than the ones you have just mentioned?

A. The principal reason for the consigned stock is to enable concerns to go into business that haven't sufficient capital to buy the material outright. It is to allow a man with a moderate initial capital to start in business with the use of consignment. It is also—it is also a valuable assistant to the manufacturer in seeing that his customers do not do things—do not do things that destroy his market in other cities. He has—he owns the material, and he can direct the disposition of the material as long as it is his consigned stock, whereas if it is an outright owned stock, why, then, the man can do as he pleases, and what he

does may ruin a much larger market adjacent there-
2111 to, although we have never refused to sell anyone who wishes to purchase outright—we have never refused to sell them.

Q. How long, to your knowledge, has that method of doing business, that is, under the consigned stock method, been in vogue in the Rigid Steel Conduit Industry?

A. You mean by any individual or by the majority?

Q. By the majority.

A. I would say that it has been in general use probably since 1923 or 4. We were one of the later ones to adopt the consignment method.

Q. Now, it appears already in the record that Mr. Blake recommended the adoption of a form of consigned stock contract. I want to ask whether or not your company acted upon Mr. Blake's advice and followed the form that he recommended.

A. We did.

Q. Did you do it—

By Mr. Stewart:

Q. Did you have any additional advice before you finally decided to adopt that form?

2112 A. We referred the contract to our attorney and had him pass on it before we adopted it.

As a matter of fact, the contract was not very much different than the one we had been using, except in its phraseology. It was practically the same as we had always used.

(A document was thereupon marked for identification "Respondents' Exhibit 54-A to 54-D and 55-A to 55-C.")

By Mr. Stewart:

Q. I show you Respondents' Exhibit 54-A to D, inclusive, ask you to look at it, and tell us what it is, please.

A. This is an actual consigned stock contract that we had signed with the American Electrical Supply Company of Chicago.

Q. Dated as of what date?

A. April 5, 1928.

Q. Now, I ask you to look at Respondents' Exhibit 55-A to C, and ask you if you know what that document is.

A. This is the consigned stock contract of the Steelduct Company.

Q. Do you know whether or not that is the form of contract which Steelduct had prior to 1932?

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A. I do.
Q. Is it?
A. Yes.

2113 Mr. Stewart: I offer these in evidence (handing the documents to Mr. MacIntyre.)

Mr. MacIntyre: I would like to ask the witness a question.

Trial Examiner Norwood: Proceed.

Examination on Voir Dire by Mr. MacIntyre.

Q. Referring to this Respondents' Exhibit, for identification, 55-A to C, do you know whether or not the Steelduct Company adopted the consigned stock contract subsequent to the date that you said they adopted this form, which had any different wording in it and provisions in it from the one there?

A. We would have to read this and the subsequent one to answer it. They did adopt the uniform contract that Mr. Blake suggested.

2115 RESPONDENTS' EXHIBITS NOS. 54-A to 54-D, and 55-A to 55-C were offered and received in evidence.

2116 By Mr. Stewart:

Q. Mr. Quinn, in Commission's Exhibit 5, which I am not showing you, there is a reference to the apportionment of a jobbers relation committee, and one of the members of that committee was yourself.

Will you state whether or not that jobbers relation committee ever did anything?

A. I do not recall ever doing anything. You know, all associations have a great habit of appointing committees when they just want to kill anything, and I assume that was done in that case. I do not recall. If I was a member of that committee, I would have to see the minutes as to why I was appointed. I do not at this stage remember without refreshing my mind of the appointment of such a committee.

Mr. Stewart: Have you Exhibit 5, Mr. MacIntyre?

Mr. MacIntyre: It is in there.

By Mr. Stewart:

Q. I call your attention to item 5 of Commission's Exhibit 5, which refers to the Jobbers Relation Committee.

A. No, there was—that committee never met, as far as I can remember.

Q. Mr. Quinn, in the minutes of March 9, 1937, which are in evidence as a Commission's exhibit, it appears that at that time Mr. Blake was made president of the Rigid Steel Conduit Association. Can you give us the rea-
2117 son for Mr. Blake's election as president?

A. Under the by-laws of the Association, the chairman of the Association had to be a manufacturer. Mr. Blake always presided at the meetings, and in order to give him a standing, if he went any place as a representative of the Rigid Steel Conduit Association, they gave him the title of president. If it had not been for the by-laws of the Association, he would have been made chairman, but not being a manufacturer he could not be made chairman, so he was given the title of president so as to have a title and some authority when he represented the Association at any place he happened to go.

Q. Now, the minutes of March 31, 1937, which are in evidence as a Commission's exhibit, the number of which I cannot give you—15—refer to the labor situation in the industry. Down at the bottom of the page.

I want to ask you as to whether or not that problem at that time, that is, the labor situation, was serious or not and what effect, if any, it had on the matter of cost of your product.

2120 A. It was about this time that several of us signed contracts with the union to have closed shops, and that immediately increased our hourly rate and increased—and decreased our number of hours per day, and I say "we" because our contract expires first, and whatever deal they make with us it usually affects the other conduit manufacturers that follow, because our labor
2121 prices usually determine labor prices for the other conduit manufacturers who have a union contract. That I can state for the manufacturers generally. For ourselves, the adoption of a union contract decreased our productive capacity. We have never been able to produce in our plant as much tonnage since we signed the union contract as we did before, with the same machinery and with additional machines.

By Mr. Stewart:

Q. And from the standpoint of cost, what direction did your cost take?

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A. If you raise the price of a product, and if you reduce the productive capacity of your plant at the same time, you naturally increase your cost.

2122 By Mr. Stewart:

Q. Mr. Quinn, in the minutes of January 27, 1937, which are in evidence as the Commission's Exhibit No. 11, which Mr. MacIntyre incidentally does not have among the exhibits temporarily, the problem of store-door delivery was discussed at the meeting of the Rigid Steel Conduit Association held on that date. I ask you, without giving you the benefit of the minutes, whether or not you recall the questions arising out of the problem of store-door delivery.

A. Yes, sir; I do.

Q. Will you state what those problems were and
2123 why they were discussed in the meeting of the Rigid Steel Conduit Association?

A. The question of store-door delivery, of course, involves trucking. The growth of the trucking companies over the preceding few years have been startling to the railroads, so the railroads had adopted a store-door delivery method of handling l. c. l. quantities of freight. Now, that store-door delivery means that they would pick it up at our plant and deliver it at the door of the consignee. Originally the railroads agreed that—or probably the Interstate Commerce Commission permitted them to agree that the minimum rate would be 45 cents no matter what the—45 cents per hundred—no matter what the actual rate should have been, that was the minimum. Now, that immediately put a very severe burden on close-by towns. Using our own section as an example, a merchant in Butler—probably the rate to Butler would be, by guessing, I would say 18 cents. Now, the average—the average charge that the railroad—or the allowance that the railroad makes you—you see, you have the privilege of doing the hauling at both ends if you care to, and they will refund you that amount, and it is 6 cents a hundred at each end of the line, so that if the rate was 18 and you added the 12, which is 6 cents at each end of the line, that would mean that the total amount would only be 30 cents, and it would mean that any trucking company would haul it for approximately 30 cents, and this became so evident to the New
2124 York Central and one or two other roads that they adopted a new system of store-door rates in which they

showed the base l. c. l. rate plus 10 or 12 cents a hundred for the store-door services. The Pennsylvania Railroad never adopted that. Or, at least—I say "never." To the best of my knowledge it is still in effect. The result was that it put us in a very difficult position because in towns like Buffalo, Rochester, Ashtabula, and places of that kind where both the New York Central and the Pennsylvania operate, the Pennsylvania's rate might be 45 cents, whereas the New York Central might be 26; and if we quoted a customer 26 cents he might decide he wanted it on the Pennsylvania, and we would have to pay 45 cents and absorb the difference which, I think, has always been contrary to the rulings of the Interstate Commerce Commission for anybody to absorb part of the freight. So that, plus the ever-present growth of trucking, was the subject of not only that meeting but other meetings, the question of how to handle the store-door delivery problem.

Does that answer your question?

Q. And what was done about it?

A. As near as I can recall, several years ago it was decided that the freight bulletin would have to carry the 45 cents because of the difference between the filing of the two railroads.

Q. And in case you shipped to a customer on the
2125 New York Central, what did you do with regard to giving him information as to the New York Central rate?

A. We have always notified our customers whenever they have put on a routing which was more expensive than an established routing that we knew. We do that to this day. If a customer—if a customer can save by trucking over the freight rates—and that is true in some sections—we always advise him that he can save money by trucking and then he can elect to do as he pleases.

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2128 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is hereby reconvened at 10 o'clock a. m., December 2, 1941, in Room 332, Office of the Federal Trade Commission, Washington, D. C.

Please note the appearances.

Mr. MacIntyre, you are ready to state your attitude to those pending proffers there from Respondents' 37 to 52, inclusive?

Mr. MacIntyre: In reference to Respondents' Exhibits, for identification, 37 to 52, inclusive, included in the pending offer, the only objection that I have to these documents is that they do not add anything of a material character to the record other than bulk. They do not meet any evidence that is in the record or any of the charges in the complaint. They do, to a small degree, however, corroborate in a small measure in one or two instances some of the evidence that is in the record.

Trial Examiner Norwood: Off the record.

(Remarks off the record.)

Trial Examiner Norwood: Back on the record.

The objection is overruled and the exhibits are received as marked.

2129 RESPONDENTS' EXHIBITS NOS. 37-A to 37-E, 38-A and 38-B, 39-A to 39-D, 40-A and 40-B, 41-A, 41-B, and 41-C, 42-A and 42-B, 43-A, 43-B, and 43-C, 44-A and 44-B, 45-A to 45-G, 46-A and 46-B, 47-A to 47-J, 48-A and 48-B, 49-A to 49-E, 50-A to 50-D, 51-A to 51-G, 52-A to 52-D, were offered and received in evidence.

L. R. QUINN thereupon resumed the stand and testified further as follows:

Trial Examiner Norwood: Proceed with the examination of Mr. Quinn.

Direct Examination (Continued) by Mr. Stewart.

Q. Now, Major Quinn, I would like to call your attention to the subject of price cards.

First, I should like to ask you as to why it is that the various members of the conduit industry use the same num-

ber when they issue price cards, that is, if they issue the same card.

A. It is done merely as a matter of convenience in correspondence, and in telegrams, and in telephone conversations. In other words, if "X" Company had No. 12, "Y" had No. 60, and "Z" had No. 90, and the report came to you that material was being sold on card No. 12,

2130 you would have to go back and say, "Who is card No. 12?" But when your agents wire in to you that material is being sold on card No. so and so, all you have got to do is turn to your own card to find out what is the price being quoted.

There is no reason for it. There is no advantage to it, other than the convenience in your discussion with your agents and your customers. You know the minute somebody says that "X" Company has quoted card 72, you know immediately what they are talking about. You do not have to send out some place to find out where "X" card 72 is to find out what they are quoting. It is purely a matter of convenience.

Q. Now, in the issuance of your own price cards, have you had anything to do with that matter?

A. You mean have we been initiating—

Q. No. Have you personally—

A. Personally, yes.

Q. —had anything to do with the matter of the issuance of price cards?

A. I had the final say on the issuance of every price card.

Q. Now, what do you take into consideration in determining whether or not your company shall issue a price card?

A. The primary item in the issuance of a price card is the price of pipe, and that is the principal controlling factor in the issuance of price cards.

2131 Q. All right, now, since you mentioned that subject, what portion of the cost of finished conduit is represented in the price of raw pipe?

Mr. MacIntyre: I object. Elements of cost are not in issue here. It is the activities of these Respondents in their combination to fix prices and use the methods in fixing prices.

Mr. Stewart: Well, that is exactly what I am trying to bring out, that one of the very serious elements in deter-

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mining whether or not the price of conduit shall be advanced or lowered is the question of whether the pipe goes up or goes down. It is a very large portion of the price of conduit.

Trial Examiner Norwood: Are you going to show that with respect to every price change?

Mr. Stewart: I hope to account for every price card issued by Enameled Metals and, for that matter, every other manufacturer. I do not know whether I can account for all of them, but certainly I shall account for most of them, as to why they were issued.

Trial Examiner Norwood: Would that be an exclusive particular?

Mr. Stewart: No.

Trial Examiner Norwood: Would that negative agreement even though the costs required an advance in price?

Would that negative the fact that the advance was
2132 made by agreement, that it was not made for more than the cost would justify?

Mr. Stewart: There are other elements. Pipe is one portion of it. There are other elements of cost which will account for the rise of price of conduit, but I can't get them all in at once.

Mr. MacIntyre: The Supreme Court of the United States in the Madison Oil case, on May 6, 1940, made it very clear that the law is that you can't fix prices below cost, at cost, or above cost, and that when you attempt to do it that you violate the law, and the charges in this complaint are that these Respondents did it in combination. Now, as to whether their costs were going up or going down or remaining stationary is entirely a question irrelevant and immaterial here.

Mr. Stewart: But obviously—

Trial Examiner Norwood: In the Sugar case, and some other cases, the judge has set out in the findings the various—

Mr. Stewart: Factors; yes.

Trial Examiner Norwood: —objects that were behind a given practice, and he discussed their proportional importance.

Mr. Stewart: That is right.

Trial Examiner Norwood: Yes.

2133 Mr. MacIntyre: If Your Honor will recall, the defense that Mr. Stewart is attempting to interject

now was the defense that the counsel for the oil companies carried to the Supreme Court of the United States. It was rejected unanimously as having no bearing upon the issue of a charge of combination to fix prices,—

Mr. Stewart: Mr.—

Mr. MacIntyre: —absolutely rejected without a dissenting vote.

Mr. Stewart: That isn't what the Supreme Court—

Trial Examiner Norwood: That is offered to prove combination here.

Mr. Stewart: That is right.

Mr. Gilpatric: Your Honor, I think it is a very essential part of the Respondents' case here to show that the changing of price cards was a matter of independent action on the part of the various Respondents. Now, Mr. MacIntyre would have the inference drawn from the fact that, we will say, card 75 was put out by various manufacturers at the same time, that that meant collusion. We want to show that there were other circumstances responsible for that.

Trial Examiner Norwood: Other things happening at the same time which would in due course result in a price rise?

Mr. Stewart: That is right.

2134 Mr. Gilpatric: Wholly independent of any agreement.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Well, it is our contention that the showing they are attempting to make now is irrelevant and immaterial and is no defense.

Trial Examiner Norwood: Read that question.

By Mr. Stewart:

Q. My question was, What proportion of the cost of the finished conduit is represented by the cost of raw pipe?

Trial Examiner Norwood: Now, he wants to give an estimate. If costs—an increase of costs are in issue here, I think it should be established by exact information and not by just estimates here.

Mr. Stewart: He is not estimating. Here is a man that has been in the business for 20 years. Now, he knows how much of his cost in making his finished product is represented by the cost of his raw material, or if he doesn't it is about time for him to get out of the business. That is what I am asking him.

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Trial Examiner Norwood: Why doesn't he give the exact cost of his raw material and the prevailing price at the same time in figures and let the Commission decide whether it is two-thirds or three-fourths, or just what it is. That is the way that they at least like to work out the problem—by exact figures.

2135 Mr. MacIntyre: Well, it is incompetent for another reason: At the time that the cost of pipe rose, if it did rise at any time, how do we know and how can we establish through this witness that at the same moment his cost on management and certain overhead items were declining while his competitors' costs on those items were also rising? It leaves us just in a state of utter confusion; that is all.

Trial Examiner Norwood: Well, I am going to sustain the objection to that question because it calls for a conclusion. Now, if you want to put in what the costs of the pipe were exactly and at the time that a given price was prevailing, why, I think that is better. Let us have the figures on it. I think that is the better procedure.

By Mr. Stewart:

Q. Will you continue, then, Major Quinn, eliminating the answer—

Mr. Stewart: You don't have to ask for an exception, as I understand.

Trial Examiner Norwood: No. You have an exception to every adverse ruling.

By Mr. Stewart:

Q. Without giving us figures, for the moment, tell us what factors have entered into the consideration by you on behalf of your company in determining whether or not you shall issue a new price card?

2136 A. Well, naturally—naturally, the element of cost is the deciding factor. That and the actions of our competitors. We have often had to issue—we often have issued cards below our cost and against our will, but if we wish to stay in business we had to meet the price that somebody else had established, but the real basis before we issue every card is to sit down and establish the cost of our material; and that cost is established by the actual pricing of the raw materials plus the overhead percentage based on the current rate of production and the anticipated rate over the next few months, because in our particular prod-

uct we have a pretty fair idea of what the requirements are going to be for the next six or seven months because the contracts for the building operations have already been signed, so all we have to do is to refer to those and consult with the F. W. Dodge Company and we have a pretty good idea of what our—what our tonnage is going to be for at least six months in advance. Of course, there are times when there are emergencies like this war that sweeps everything out of the window, or a financial panic which stops programs that have already been entered into, but in 90 percent of the cases we can tell the approximate tonnage that we will operate for the next six months.

Q. Now, are those the essential elements that you have taken into consideration in issuing your price cards, or have you left out anything at all?

2137 A. I can't think of any other factor other than cost and competition. There might be a time when—when there was a shortage of materials that would cause you to put out a card to stop sales, but with the exception of the present emergency, that has not appeared before, since I have been in the business.

Q. Now, what, if anything, has the fluctuations in—has the fluctuation in the cost of raw pipe to do with the fluctuations in the price of conduit?

A. Well, Mr. Stewart, it is perfectly obvious that if pipe is advanced six or eight dollars a ton you have got to advance your conduit card a like amount, and if the price of six or eight dollars a ton is caused by the increase in the cost of labor by the pipe manufacturer, and our plant being immediately adjacent to the manufacture of our pipe, naturally if their labor costs have advanced ours, of necessity, must be advanced, because we have got to pay the same wages, so that if they have increased the price of pipe $8 a ton we have got to increase the price of conduit considerably more to offset—see, the price of pipe is better than 50 percent of the cost of your material, and labor is approximately 25 percent of the cost of conduit. Now, if you increase—if you—if they increase the price $8 a ton on account of labor, that means that we have got to increase the price of conduit $12 a ton to take care of the cost
2138 of our labor plus the cost of pipe.

2139 (A document was thereupon marked for identification "Respondents' Exhibit No. 56.")

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By Mr. Stewart:

Q. I show you Respondents' Exhibit No. 56, for identification, Major Quinn, and ask you whether or not you prepared that document.

A. I did.

Q. What is it, please?

A. This is the—this is the cost of raw pipe.

Q. Beginning when?

A. Beginning in 1923 and up to the present date.

Q. Does that show the changes in the price of raw pipe?

2140 A. It does.

Q. Over that period?

A. It does.

Q. And is that the same raw pipe that you would buy in connection with your conduit?

A. It is.

Mr. Stewart: I offer this in evidence for the purpose of establishing one factor, to be followed by testimony showing that the changes in the price of pipe did in a material way bring about some of the changes in the price of conduit and the issuance of the card.

Mr. MacIntyre: I would like to ask the witness a question or two about this document.

Trial Examiner Norwood: You may.

Examination on Voir Dire by Mr. MacIntyre.

Q. You stated to Mr. Stewart that you prepared this, Major Quinn. When did you prepare it?

A. Within the last 30 days.

Q. For use in this case?

A. That is right.

Q. And from what information?

A. From the actual price cards of the Spang Chalfant Company and from my records.

Q. You took the price cards of Spang Chalfant Company?

2141 A. And our own records to show what we paid.

Q. And what was the nature of your records that you took for that purpose?

A. The nature of the records?

Q. Yes.

A. Our manufacturers ledger where we—where we enter

the pipe as purchased and the vouchers and the invoices of Spang Chalfant in billing the material to us.

Q. And from whom at Spang Chalfant did you get the cards that you used as a partial basis for the tabulation of this document here?

A. Their published cards, and we have them at all times. We have them in our plant. We have to have them. The minute a change of pipe price takes effect they send us a number of these cards so that our accounting department will have the cards to figure the new prices.

Q. And do you know what prompted Spang Chalfant to issue to you those cards that you used as a basis for tabulating this document?

A. By God, we buy from them. How can we buy from them if we don't know their prices?

Q. I say, do you know why they issued them to you?

A. I haven't the slightest idea.

Q. You do not know anything about that?

A. No. I do not know why they issued the change in price.

2142 Mr. MacIntyre: I object to the offer as incompetent, as irrelevant, and as immaterial.

Trial Examiner Norwood: You testified that is what you paid for pipe at those times?

The Witness: That is correct.

Trial Examiner Norwood: Objection overruled.

Received as marked. Respondents' Exhibit 56.

RESPONDENTS' EXHIBIT NO. 56 was offered and received in evidence.

Direct Examination by Mr. Stewart (Continued).

Q. Major Quinn, are you able to give us the reason for and the circumstances in connection with the issuance of the price cards of Enameled Metals Company beginning with card 69, let us say, in 1933?

A. Well, I can't give it, except that I prepared a memorandum for you that was the result of discussion with my associates, and the best of our recollection, and I prepared that for you and gave it to you.

Q. Now, if I gave you this memorandum, would it enable you to refresh your recollection?

A. It would, naturally.

Q. Well, I hand you this memorandum and ask you if that is the document to which you refer.

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2143 Mr. MacIntyre: I object to the witness reading from any memorandum that he has prepared as a defense in this case for the purpose of testifying from it from the stand as to the reason that he has made any changes.

I object to the witness now looking at it as he is while we are arguing the merits of it.

Trial Examiner Norwood: Well, didn't he make this paper?

Mr. Stewart: He dictated it, yes.

Trial Examiner Norwood: If he made that paper, he may look at it, but he may not read it into evidence. He can put it away and then give his testimony.

Mr. Stewart: That is right.

By Mr. MacIntyre:

Q. When did you prepare that paper, Major Quinn?

A. Some time last spring.

Q. Since the defense started preparing its case here?

A. Certainly.

Q. And for the purpose of the defense, and you handed it to your attorney for that purpose; is that correct?

A. Naturally.

Mr. MacIntyre: I object to him reading it or refreshing his memory from it for any purpose while he is a witness on the stand, since it is a paper not made in the due course of business or from papers made up in the due course 2144 of business.

Trial Examiner Norwood: No, I could not confine papers which may be used to refresh his memory by such narrow restrictions.

Mr. MacIntyre: On the basis of that ruling, if Your Honor please, I would like to argue this, that the Respondent could have prepared, and, in fact, I would contend that this is a part of the trial brief which was prepared by this Respondent, and which is being used by the counsel for the Respondent for their defense in this case, and it is tantamount to the witness, therefore, taking the trial brief, or at least a portion of it, to the stand and giving testimony from it into the record. I submit that it is highly improper.

Trial Examiner Norwood: Well, he might take a portion of the trial brief if it related to figures that he had made and extracted from his books, and so on, and if that paper would refresh his memory from it. As I told you, he may not read that paper into evidence.

Mr. Stewart: That is right.

Trial Examiner Norwood: Now, you refresh your memory from it, and put the paper away, and then answer the counsel's question.

Now, what is the pending question?

Mr. MacIntyre: I ask that the paper be marked for identification before he starts using it.

2145 Trial Examiner Norwood: Yes.

Mark it Respondents' 57.

(The document referred to was marked for identification "Respondents' Exhibit No. 57.")

By Mr. Stewart:

Q. All right, now, take card 69, Major Quinn, and tell us whether you recall after looking at that document as to the reasons your company issued card 69?

A. I cannot. Those cards were issued during the days of the N. R. A., and nobody had any recollection—

May I see that pipe card?

Mr. MacIntyre: That is Respondents' Exhibit 56 (handing to the witness).

The Witness: Card 69 was issued on July 17 by our company.

By Mr. Stewart:

Q. What year, please?

A. 1933. And the price of raw pipe advanced $5 a ton on July 1, 1933.

There is nothing in this memorandum that tells me anything, except the N. R. A. Code, but it would seem perfectly plain that the card was advanced because of the advance of our pipe $5 a ton.

Q. Now, take card 70.

A. Card 70 was issued on July 24, 1934. There
2146 appears to be no advance in pipe at that time, so I do not have anything in this paper that shows why the price advanced at that time. There was an advance in pipe in April, which may have had some bearing, but in view of the fact that it is from April to July, I can't testify at this date that that was the cause of the advance.

Q. Now, what about card 71?

A. Card 71 was merely a change in the form of the card. It was not either an advance or a decline.

Card 70 was a four-column card, and card 71 was three columns.

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Q. Now, what date did your company issue that card?

A. January 15, 1936.

Q. Take card 72.

A. Card 72 was issued by us on March 17, 1936. It was a drop of approximately 27 percent. The exact reasons for it I can't testify to, except that the initial card dropping the price was issued by Fretz-Moon Company, and then a further reduction was made by the Youngstown Sheet & Tube Company, and the result was that when they got finally through it was 27 per cent, and we being in the same business had to issue a comparable card.

Q. Now, may I ask what that reduction represented from the standpoint of its being your selling conduit below your cost?

Mr. MacIntyre: I object.

2147 Trial Examiner Norwood: Read the question.

Mr. MacIntyre: For all the reasons I have stated heretofore to the introduction of any evidence relating to cost.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: For the further reason that it is incompetent in the manner called for.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I think he may tell us that. Objection overruled.

A. This card was materially below our cost of production, because it returned to us approximately $80 a ton, and we had to pay our agents $5 a ton as a selling commission, so the net return to us was about $75, and that is —we in our own company charged against our surplus $15 a ton all the time we manufactured that, so as not to have the operations of our company appear to be losing so much money. That was purely for our own bookkeeping.

By Mr. Stewart:

Q. Take card 73.

I would like to ask you, do you recall how long prior to the date you issued your card 72 the other cards had been issued?

2148 A. I would say about a week. It might be a little longer, but I would say about a week.

Q. You mean by that that the other cards had been issued a week before your card?

A. That is right. That is right.

We never issued card 73.

Q. Was that card issued by other manufacturers?

A. I assume that it was. I have no knowledge at this date, but I assume that it was.

Q. All right, now, 74.

A. Card 74 was issued November 17, 1936, and it was an advance of 5 percent over our card 72, and that was merely—that was merely an attempt to get back on our part some of the losses we were suffering.

Q. Do you know—well, we will get to that in a moment. Now, card 74—75. Is that the next?

A. Seventy-five.

Card 75 was published on February 25, 1937. It was an advance of approximately one percent to take care of what we had been led to believe was the increased cost of the jobbers in doing business, due to the Social Security law and some other Government taxation, and the price was raised one percent to give the jobbers six percent instead of five percent compensation.

Q. Card—the next number. What is it, 76?

2149 A. The next is 76. That was issued on March 9, 1937. On March 5, 1937, pipe advanced $10 a ton, and at the same time we had signed new labor contracts increasing the hourly rate and reducing the hours worked, time and a half for Saturdays and double time for Sundays and holidays. Zinc had advanced, and all of our major raw materials had advanced in price, so the card 76 was an advance of about—a little better than 20 percent.

Q. Now, card 77.

A. Card 77 was published on July 8, 1938, and it followed a reduction on July 1, 1938, of $8 a ton in the price of pipe, and this card was a series of cards by other manufacturers. There was an attempt made on the part of some of the manufacturers to reduce the price of zinc coated conduit less than what they reduced the price of enameled, but one of the companies felt that because of the backlog that they felt certain manufacturers had on the old card 72 that they would go still further, and it netted a reduction of 20 percent over card 76 on both black and galvanized.

Q. Take the next card.

A. Card 78—

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Q. Did you give us the date which your company issued that?

A. Yes; July 8, 1938, and July 28, 1938, and that was in this same group of the issuance of price cards.

Card 78 is the one that reduced the galvanized the
2150 same amount as the enameled. The enameled prices on both 77 and 78 are the same.

Q. Take card 79.

A. We never published card 79. We simply sold our material at 5 percent below card 78. We never published 79.

Q. Take card 80.

A. Card 80 was published on November 28, 1938, and it was the same card as card 78 up to the lapweld sizes.

As a result of the N. R. A. code, the steel companies had increased the cost of the lapweld pipe as against buttweld pipe, and we had never reflected that in the conduit cards.

In card 80 we reflected the $6 a ton differential that the steel companies had put in on lapweld pipe

Mr. MacIntyre: I object and move that the first portion of his answer to this last question be stricken. It is obviously incompetent. He has stated that the steel companies did something because of something else.

I would like that the Reporter read it.

Trial Examiner Norwood: Read the first part of his answer.

(The first part of the answer was read.)

Mr. MacIntyre: How can this witness know that all of the steel companies advanced the price at that particular time on lapweld pipe because of the N. R. A. Code?

2151 Mr. Stewart: Well, that is for you to find out on cross-examination.

Mr. MacIntyre: Well, it is so obvious.

Trial Examiner Norwood: Motion denied.

By Mr. Stewart:

Q. Take card 81.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: I will study that answer in the record, and if I find it should be stricken I will strike it later.

By Mr. Stewart:

Q. All right, Major, card 81, please.

A. Card 81 we issued primarily. We were the company that initially initiated card 81.

Q. Give us the reason for issuing that card.

A. Well, zinc had gone from below 4 cents a pound to 6. In hot galvanized conduit it takes 200 pounds of zinc to produce a ton of conduit. That is $4 in the advance in price. And, of course, our labor and other materials were constantly advancing. But, as a matter of fact, we only increased the price 5 percent between the two cards.

Q. Take card 82.

A. We never published card 82. Card 82 was merely card 80. All of the companies apparently did not
2152 follow card 81, and we never published 82, because we merely withdrew 81 and went back and sold on 80, which was the same as 82.

Trial Examiner Norwood: That is, the same prices throughout?

The Witness: Yes.

By Mr. Stewart:

Q. Now, take 83, please.

A. Well, card 83 was published in November, 1940. By that time zinc had gone to 7¼ cents a pound, and our labor had gone from a low of 40-odd cents an hour to a contract of 72½ cents an hour.

Q. You say 72?

A. 72½ cents an hour. That is the basis. You start from there. And my recollection is that Walker issued this card, and at the time they issued the card they did not change the price on enameled conduit. When we issued the card in November we raised both black and galvanized. And I am not certain whether all of the rest of the companies followed our card or not. We were more or less the initiator of the card 83 as we published it.

Now, whether Walker was the first company to announce the advance on galvanized—I think we were the first company to announce a general advance in conduit, and Walker's card came out in October and ours came out in November.

Q. Take card 84.

2153 A. 84 was published in January of last year. It was published directly as a result of the constantly

increasing cost of manufacturing. Naturally, anybody in business is familiar with the constantly increasing cost of production today. The newspapers and everything shows you the constant labor turmoil and the constant increase of every item of manufacture.

Q. But has that, in fact, been your experience in your own plant?

A. Yes, absolutely.

Q. Now, Major, with regard to every one of these cards about which you have testified, what, if any, agreement did you have with any of your competitors in connection with the issuance of those cards?

A. We never—

Mr. MacIntyre: I object. It calls for a conclusion rather than a statement of facts as to what could be looked to to determine whether or not he did have an agreement.

Trial Examiner Norwood: Objection overruled.

A. We never—we never had any agreement with any manufacturer in the twenty-odd years I have been in business about the publication of a card. The publication of a card was the result of our own conclusions in our own plant.

Q. Now, Major, will you explain just how these cards operate?

Let me ask, to be specific, does it follow from the
2154 fact that a card is issued on a given date that from that date on conduit is sold on that card? Will you explain that?

A. That is—that is not true. You—the card as published is merely a hope of the company that at some time in the future they can get that price. We are all—we are always confronted with a tremendous backlog of orders which has amounted to as much as five or six months' normal sales of the industry. Now, as long as those orders are in effect we are forced to meet those competitive conditions. As a matter of fact, in 1938 we took the Social Security Building here in Washington on approximately the card 72 price which had been out of existence since 1936, but we were forced to do that because of the belief—our belief—that others had quoted that price, and I have—even today we are getting reports from the field.

2156 Q. Had you finished your answer? I don't recall.

A. I think so.

Q. All right.

Now, each contract contains a 30-day clause. Now, what in practice—

A. Each contract includes a 30-day clause?

Q. I mean the price sheets. The price sheets in evidence, as I understand it,—

Trial Examiner Norwood: Well, what 30-day clause were you referring to there?

Mr. Stewart: To allow 30 days after publication of a new card.

A. That hasn't always been 30 days. It was 30 and then it was reduced to 15. I would have to read the current card to see whether it was 30 or 15.

Trial Examiner Norwood: You mean 30 days be-
2157 fore the card became effective?

Mr. Stewart: Well, that is—

The Witness: Mr. Norwood, we are quoting on buildings at all times. We have made commitments and contractors have in turn put in their estimates on the jobs. We give them 30 days in which to reduce those commitments to actual contracts or we withdraw the quotation.

By Mr. Stewart:

Q. That is the clause I was referring to.

A. Yes.

Q. All right.

Now, then, in practice where a card has been issued such as card 76 in which the price of conduit has increased—had been increased, what has been your experience from the standpoint of the buying of conduit under those circumstances?

A. The—my own opinion and our company's opinion—

Mr. MacIntyre: I object to the witness giving any opinion here.

Q. Give us your experience.

A. Our experience is that whenever a price advances every contract that you have is taken in full. They take every, every ton that is shown on the contract, whereas if the price is reduced we reduce the price on the contract. In other words, we protect the buyer against advance
2158 and give him the advantage of any decline during the life of the contract.

Q. All right.

Now, specifically directing your attention to the price advance on card 76, what was your experience in that situation?

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A. The—there was a tremendous buying in the next 30 days.

Q. On what card?

A. On the card 75 in evidence—if you have my tonnage sheets here it would show itself. That tonnage report for April of 1937 will show that the sales for the industry were materially higher for April—March and April than they had been for the previous months.

Trial Examiner Norwood: But those sales were at the old price?

The Witness: They were at the old price. It might be of interest to the Examiner to know that the majority of our sales are made by—on consignment, and the jobbers have this material in their stock. Now, we actually have a right under our contract to say how much of that they can buy, but it has been the policy of all well-established jobbers when there has been an advance in the price of conduit to buy all of the currently moving sizes that they have in their consignment at the past card, so invariably when the price advances you not only have large sales on your contracts, but you also have tremendous sales in your consigned stocks.

2159 By Mr. Stewart:

Q. Now, then, what effect does that have on the market from the standpoint of the new card?

A. As long as any of that material is in the hands of the jobbers, the jobbers will reflect it in quoting to their customers, and as a result there is a considerable time gap in between the—the effective date as shown on the card and the effective date as the return to the manufacturers of the advance in price. It has been in some cases many months.

Q. Now, take the experience of your own company with sales on card 76. Can you state whether or not your sales were material or negligible?

A. Our—

Mr. MacIntyre: I object to any further testimony along that line. It is immaterial as to whether the amount that he sold after this price advance was large or small.

Trial Examiner Norwood: Just what is the relevancy of that information?

Mr. Stewart: Well, it seems to me that it shows the unimportance of the issuance of a particular card. In this particular instance card 76 was the one that raised the prices.

Trial Examiner Norwood: Raised the prices, but he didn't make many sales at that price.

Mr. Stewart: That is what I want to show. That 2160 is what I am asking him.

Trial Examiner Norwood: Well, what would that prove?

Mr. Stewart: Well, as I understand the contention here on Mr. MacIntyre's part—he probably won't acknowledge it at the moment—but he attributes a great deal to card 76. I want to show that card 76 doesn't have nearly the significance he things it does.

Trial Examiner Norwood: From what standpoint?

Mr. Stewart: From the standpoint of sales of conduit on the card, and from the standpoint of the fact that that card has really meant nothing in particular markets.

Mr. MacIntyre: My contention about card 76 is it is simply an expression through a price-fixing device to increase price quotations, and it did precisely that, in violation of law, and the fact that they sold little or sold much under it doesn't meet that issue at all.

Trial Examiner Norwood: How long did that card prevail?

Mr. MacIntyre: A year and a half.

Mr. Stewart: Now, just please. Are you an expert on conduit, too?

Mr. MacIntyre: I am only accepting the testimony of these Respondents.

Mr. MacIntyre: Well, ask Mr. Quinn. He probably 2161 knows the business. You don't.

Trial Examiner Norwood: Well, that was his expression, that it prevailed a year and a half.

Mr. Stewart: That isn't so.

Trial Examiner Norwood: I will ask the witness how long did it prevail?

The Witness: Seventy-six was published in March of 1937, and 77 was published in July of 1938.

By Mr. Stewart:

Q. But how long did sales take place under 76?

A. Under 76?

Q. Yes.

A. Well, there were some sales under card 76 during all that time, but very small quantities because 76 was never effective.

Trial Examiner Norwood: Well, didn't you make sales under 76 after the next card appeared?

The Witness: Oh, no. No. The next card was a reduction.

Trial Examiner Norwood: Was a reduction?

The Witness: So the minute card 77 was published there was no more sales under card 76.

Trial Examiner Norwood: Well, I can't see any harm in his completing the picture by this information. I also can't see any relevancy. So I think if it is relevant
2162 you may give us the exact figures later, and I really think that the objection should be sustained.

By Mr. Stewart:

Q. Now, Major Quinn, before the recess you made some mention of sales on card 72, as I recall it.

A. That is correct.

Q. Have there been any investigators from the Commission in your office taking your sales—your invoices over a period of years?

A. They took—I gave them all the invoice binders they cared to have, and I think they worked upwards of two weeks in making copies.

Q. And if those were available to you, could you answer the question as to what sales were made on price cards?

A. I can make—on the particular invoice referred to me I could. I couldn't from those—they didn't take all of the invoices. They only took certain of the invoices. The books would show. I also prepared for you a statement of certain months to give you an idea of how our sales were made, but I didn't give it to you for the entire period. I only took—I took certain months over various years and analyzed our sales.

(A document was thereupon marked for identification "Respondents' Exhibit No. 58.")

By Mr. Stewart:

Q. I show you a document marked Respondents'
2163 Exhibit 58, for identification. I ask you if that is the information you furnished me—

A. That is correct.

Q. —with reference to sales on and off the card?

A. That is correct.

Q. Now, can you by—First, let me ask you, are you familiar with this information contained in this?

A. I prepared it.

Q. Will you, starting with card 70, let us say, state the percentage of sales that were made on the cards beginning with that card, or off the cards, whichever way—

Mr. MacIntyre: Is the witness giving this testimony by reference to this exhibit?

The Witness: This is a copy—

Mr. MacIntyre: Or a copy of it?

The Witness: This is a carbon copy of the exhibit.

Mr. Stewart: Yes.

Mr. MacIntyre: And you propose to have him look at that and answer the question you have just asked?

Mr. Stewart: Certainly. He can't carry these figures in his head.

Mr. MacIntyre: Before he is permitted to answer that question, then, I would like to ask him a question or two.

Mr. Stewart: Sure.

2164 *Examination on Voir Dire by Mr. MacIntyre.*

Q. Major Quinn, I show you Respondents' Exhibit, for identification, 58. Can you tell me, or state for the record, what portion of any of the percentages listed on this exhibit relate to sales made on orders given to you during the months indicated on this exhibit, or what portion of those percentages relate to orders given to you at some previous date in which you were then filling under the contracts on—or during the months indicated?

Mr. Stewart: Well, I object to that question as being only proper in cross-examination, having nothing to do with the right of the witness to use the document for the purposes of refreshing his recollection. If Mr. MacIntyre wants to develop that in cross-examination, he is entitled to, but not now.

Trial Examiner Norwood: If he can give that, would you be able on cross-examination to break those down as indicated by the counsel?

The Witness: I—I couldn't do it without referring back to the factory, and I couldn't do it in the time of this hearing. It would mean that they would have to go and get the orders out of the file, and in the case of 1937, yes, that would be just under the five-year period. Yes, we would still have the orders. I can't testify as to
2165 whether these—how much of each one of these, but I can testify that at all times we accepted orders

currently at past cards to meet competition, but what the percentage of those orders are I can't give without an analysis of the orders.

Mr. MacIntyre: I submit that the question I did put to the witness is proper voir dire examination, and his answer establishes that, and that his answer also establishes that any reference to this card would give incompetent and confusing information.

Trial Examiner Norwood: I think it would be receiving piecemeal information from the party who has the whole story in his possession. I think it is a bad policy to do that. I don't think that either side has the right to do that. If you can present the full and complete details here that are in your possession you may do so.

Mr. MacIntyre: May I ask the witness a further question?

When you made up—

Mr. Stewart: I object to this.

Mr. MacIntyre: This is one voir dire also.

Trial Examiner Norwood: Wait a minute. No.

Read that last question.

(Last question on voir dire read.)

Trial Examiner Norwood: Now, what is the purpose of bringing this in?

2166 Mr. Stewart: I didn't ask that question. That is Mr. MacIntyre's question. What I asked him was as to whether or not he could tell us—

Trial Examiner Norwood: Oh, I want you to read Mr. Stewart's question there.

(Last question by Mr. Stewart read.)

Mr. Stewart: Now, the point about that is this: That obviously the contention of my learned friend on the other side is that these price cards have some significance in connection with the price fixing that he contends for. Now, what I want to show is that the price cards have little or no significance; that price cards really are meaningless in this conduit business; that while they published them, as you suggested it, I think, on one occasion, that they are what is hoped for, and the cards mean nothing.

Trial Examiner Norwood: You want to show by this witness a certain percentage of sales during those months that were made off the cards. Now, off-the-card sales may be divided into two classes: First, off-the-card because of previous contracts, and those are not significant. If you

can segregate those and give the other off-the-card sales in exact amount, I think you have a right to do it, but I think Mr. MacIntyre's objection is well taken because of the failure to do that, but the counsel can do that later.

By Mr. Stewart:

2167 Q. Now, Major Quinn, can you do that from the data you have here?

A. Not from the data I have here.

Q. All right. We won't press that question any further.

Trial Examiner Norwood: Objection sustained.

By Mr. Stewart:

Q. Now, you spoke of the Social Security Building job here in Washington, D. C. In what year was that job?

A. 1938 we took the contract.

Q. And the record already shows the date which—

A. 1936 was card 72. And card—do you want me to give you the dates again?

Q. No. The record shows the dates of the cards, but while you are at it—

A. Card 74 was November, 1936; card 75 was February 25, 1937; card 36—76 was March, 1937; card 717 was July 8, 1938; and 78 was July, 1938.

Q. Now, are you able to give us, beginning with card 71, the increase or the decrease in the price of conduit to date?

A. I have the copy of those—of the figures I gave you on that.

Q. Did you prepare that memorandum you have in your hand?

A. Yes, I did.

Q. Can you, without referring to it, remember all the details?

2168 A. I cannot.

Q. And by looking at it does it refresh your recollection—

A. It does.

Q. —as to the facts? And are the facts there true and correctly stated?

A. They are correct.

Q. Will you use the document to refresh your recollection and give us that testimony, please?

Mr. MacIntyre: Before he does that, I ask that it be marked for identification.

Trial Examiner Norwood: Yes. Mark it.

Mr. MacIntyre: I would like to see it before the witness uses it.

Trial Examiner Norwood: Mark it for identification.

(The document referred to was marked for identification "Respondents' Exhibit No. 59.")

Mr. MacIntyre: Before the witness answers that question I would like to look at this card for just a second.

Trial Examiner Norwood: All right.

Read the question in the meantime.

(Question read.)

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

2169 Mr. MacIntyre: I would like to ask a few questions about this document he is going to use to answer that question.

Trial Examiner Norwood: Counsel may do that.

Examination on Voir Dire by Mr. MacIntyre.

Q. Major Quinn, when did you make up this tabulation?

A. It was made up last spring.

Q. That is Respondents' Exhibit 59, for identification?

A. It was made up last spring.

Q. And for what purpose?

A. It was made up—it was made to show the counsel the net return to us of the various cards and the cost to the consumer of the various cards.

Q. And from what source did you get that information?

A. From our price cards.

Q. And your price cards are in evidence here; aren't they?

A. That is right.

Mr. MacIntyre: I object to any testimony based on this because it is a mere tabulation and picturization of evidence now in the record, and it is an attempt to brief and argue the case at this point.

Mr. Stewart: That is, of course, perfectly silly, because unless you understand the conduit business neither Mr. MacIntyre nor I nor the Examiner nor all of us 2170 put together would ever unravel that information.

Trial Examiner Norwood: Well, inasmuch as the batch of material is in evidence, and this is merely explanatory, I don't see any objection to his using it.

Mr. Stewart: No, I don't, either.

Mr. MacIntyre: It is an interpretation, though, rather than an explanation of the evidence, and that interpretation in argument based on the evidence has its proper place only in the brief.

Trial Examiner Norwood: Well, I am not sure that it is going to be an argument, and you have witnesses on the stand; they ought to explain papers, explain figures.

Mr. MacIntyre: This is not, though, if Your Honor please, the explanation as it is contended by counsel for the Respondents, but it is an interpretation and argument of the evidence now in the record.

Trial Examiner Norwood: Well, I can't determine that in advance.

I will overrule the objection and let him answer the question.

The Witness: Will you read that question?

Trial Examiner Norwood: I might entertain a motion to strike it if it is argument.

By Mr. Stewart:

Q. First, Major, explain what you have to do to 2171 get that information.

A. You have to take the price card, which in itself is the cost to the consumer, and then you have to deduct from that the compensation that you pay to the jobber, and that gives you the return to you. But there is still a further reduction in the return to you in the fact that you also pay your agents—I mean your own manufacturers' agents a commission. So this column that I have marked "Cost to Distributors" and also "Return to the Manufacturers" is not the net return to the manufacturers; it is the gross return to the manufacturers.

Now, there is a cash discount of 5 percent, and there is the agent's compensation of five percent, and that has still further reduced the net return to the manufacturers.

Q. Now, will you give us the figures as shown on that document.

A. Starting with card 69—

Q. May I interrupt you?

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Mr. Stewart: I think I said "price." I meant "selling price." That is what it is, if Your Honor please.

The Witness: Now, Mr. Stewart, do you want the net return as here—

By Mr. Stewart:

Q. Yes. I want all the information.

2172 A. All that is on there?

Q. Yes.

Mr. MacIntyre: Well, I submit that is reading from a paper that is not in evidence.

Mr. Stewart: Well, I will offer—

Mr. MacIntyre: It is not a matter of testimony based upon refreshing his collection.

Trial Examiner Norwood: The counsel's point is well taken.

Mr. Stewart: I offer it. I offer in evidence Exhibit No. 59.

Trial Examiner Norwood: Is there any objection?

Mr. MacIntyre: I would like to study it just a little bit more before stating any objections to it. I was only stating objections to the testimony.

(Mr. Stewart hands a document to Mr. MacIntyre.)

Mr. MacIntyre: The document is objected to as incompetent, as irrelevant, and immaterial. It is an attempt to brief the case and present an argument in the form of interpretation of evidence now in the record.

2174 The Witness: The last column is developed from the price sheets. They are a correct statement of the facts. It is merely taking the price sheets and taking the A section of the price sheets and deducting the jobber compensation from the published price sheets.

By Mr. Stewart:

Q. Well, Major, let me ask you this: Is that something which one unfamiliar with the business can do?

A. They can do it if they took the time to read our price cards and study them. Anybody can work 2175 this out. There is no hidden mystery in this.

Trial Examiner Norwood: In other words, this complete paper may be checked from those exhibits?

The Witness: Oh, absolutely.

Trial Examiner Norwood: Well, I shall overrule the objection and receive this subject to check, and if it is not correct I shall entertain a motion to strike it.

That is 59?

The Witness: Fifty-nine.

RESPONDENTS' EXHIBIT NO. 59 was offered and received in evidence.

By Mr. Stewart:

Q. Now, Major Quinn, in one of the minutes that I do not have accessible at the moment, there was evidently a discussion among the members of the Rigid Steel Conduit Association who were present at the meeting on the question of the elimination of warehouse stocks.

I should like to ask you as to whether or not that problem has been a matter before the manufacturers for a long or short period?

A. It has been under consideration for a long, long time.

Q. Now, will you explain first the origin of warehouse stocks, and then give us the reason your company abolished your own warehouse, if you did?

2176 A. This is more or less of a lengthy answer, Mr. Stewart. I will try to make it as short as I can.

When the electrical industry first started it was an infant industry, and many of the jobbers did not have sufficient credit to warrant the extension of credit on the part of the manufacturer.

2177 A. (Continuing.) Then as the business grew there developed the large jobber and what we commonly call the chain jobber. In metropolitan cities, where space is at a premium, many of the small jobbers did not have room to store—or felt they did not have room to store conduit. So it was necessary for the manufacturers in order to reach that type of trade to establish their own warehouses in those metropolitan areas.

In the early days there was an extra charge for warehouse expense, but as competition grew more keen there was an ever-changing method of handling warehouse stocks until it got to a point in our particular company that the cost of warehousing ran all the way from 11 to 26 percent of the amount of our invoices in the various locations.

We had of our own volition closed some of our warehouses, and we maintained the warehouses in other key points simply because our competitors did the same thing, and we had to.

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The maintenance of a warehouse put the small
2178 jobber in direct competition with the responsible jobber in the latter days of the warehouse stock, because he was able to buy from the warehouse the material at the same price as the larger jobber, whereas the larger jobber had to maintain a warehouse, unload the material, store it, take it out of his warehouse, and load it on the trucks, which, I believe the jobbers would be able to testify in their part of the case as to what that expense—what percentage of the expense amounts to, and it was obviously a losing venture for the Enameled Metals Company to maintain the warehouses.

In addition to that, I do not recall of but one stock that we had that was not short when we closed the account. We had our losses due to theft or carelessness, or what have you, run as much as $10,000 in one city.

All of these points made it very apparent to the Enameled Metals Company that the warehouses should be closed, and when we found our competitors were closing theirs we did not hesitate to close ours.

By Mr. Stewart:

Q. Now, do you recall whether or not all the competitors closed their warehouses at the same time?

A. I haven't the slightest idea.

Q. Were there other reasons for the closing of those warehouses from the standpoint of practices on the part of the small jobbers?

2179 A. Well, the small jobber was at a distinct—had a distinct advantage over the large jobber in that he could sell goods and never touch them. And, by the same token, he did not have the overhead that the larger jobber had, so that he could sell below the published price card and do so at a profit to himself, whereas the larger jobber, who maintained a reputable establishment, could not do it.

Not only that, there crept in the abuse of agents loaning you stock, and they would loan the stock to certain of their friendly customers, and they would not report it to you until it is necessary to replace the warehouse stock, which in some cases would be 90 to 120 days. In other words, the jobber got the use of the funds for that time which should have been paid to the manufacturer the minute that the material was withdrawn.

It was a very, very unsatisfactory situation.

Trial Examiner Norwood: Could these consignment men do the same thing?

The Witness: Oh, yes.

By Mr. Stewart:

Q. They stock in warehouses?

A. Oh, no. Consignment in warehouses is entirely different.

Trial Examiner Norwood: Yes.

The Witness: Yes, they could do the same thing.

By Mr. Stewart:

2180 Q. Now, what, if any, increase in the cost to the consumer took place by reason of the elimination of warehouses?

A. In the cost to the consumer? None whatever.

Mr. Stewart: Will you pardon me just a moment?

(Pause.)

By Mr. Stewart:

Q. Major Quinn, I show you Commission's Exhibit No. 24, which is the minute of November 12, 1937, direct your attention to the paragraph beginning on page 5 of the minutes, starting there followed a very general discussion. I ask you to read that paragraph and tell us whether you can recall what the existing conditions were referred to in that paragraph.

Mr. MacIntyre: What is the exhibit?

Trial Examiner Norwood: Is that something in the evidence?

Mr. Stewart: Yes, sir. It is Exhibit 24.

Mr. MacIntyre: Exhibit 24 has several pages.

Mr. Stewart: Page 5.

Trial Examiner Norwood: That is a Respondents' exhibit?

Mr. Stewart: No, sir; a Commission's exhibit.

Trial Examiner Norwood: Go ahead?

What was the question? Read the question.

(Question read.)

2181 The Witness: You want me to read this paragraph?

Trial Examiner Norwood: No. No. He is asking you to explain the conditions.

Mr. Stewart: What it refers to.

A. Well, it was just more or less of a routine matter at the end of every year. We used to discuss anticipated markets for the next year, and the ordinary conditions; and while this shows that I was a member of the committee appointed, I do not recall that the committee ever met, and I am very sure that there was no analysis made that I ever saw.

By Mr. Stewart:

Q. Well, was that a habit that the Association had of appointing committees?

A. Oh, yes. Somebody would have a suggestion about something, and they immediately appointed a committee, and I don't believe that 25 per cent of them ever met.

Q. Now, I show you—

Excuse me.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 60, 61, and 62-A and 62-B.")

By Mr. Stewart:

Q. I show you Respondents' Exhibits 60, 61, and 62-A and B, for identification, and ask you to look at them and tell us whether or not you are familiar with them, 2182 and if you are in any way responsible for their issuance.

A. These are my letters to our agents.

Q. And were they sent to your agents? I don't mean those; I mean similar documents.

A. Yes. I am just looking.

I am certain that 60 and 61 went both to our customers and our manufacturers' agents. I would have to ascertain from the files whether or not 61 went to any more than—went to other than our own manufacturers' agents, because the caption is to our agents, whereas the caption on the other is to our distributors agents and sales agents.

There should be a second page, though.

Mr. Stewart: I do not know where it is.

(Discussion off the record.)

Mr. Stewart: Well, I will offer these documents in evidence for the purpose of showing the independence of action on the part of Enameled Metals Company in connection with the issuance of its price sheets and its policy with respect to its distributor agents and sales agents (handing the documents to Mr. MacIntyre).

Trial Examiner Norwood: Those relate to the matters shown in evidence?

Mr. Stewart: Sir?

Trial Examiner Norwood: Do the exhibits proffered relate to matters heretofore brought out?

2183 Mr. Stewart: Well, they complete the picture and establish, according to my view, that Enameled Metals Company, and Mr. Quinn in particular, made his own decisions as to the matters involved in the litigation. And, of course, the price cards are already in. And what these have to do with is the matter of purchases, you see, in view of these conditions he states in the documents.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Can you proceed with something else for about 10 minutes?

Mr. Stewart: Yes.

Trial Examiner Norwood: I will reserve the ruling on those.

By Mr. Stewart:

Q. Major Quinn, were you familiar with the circumstances surrounding the employment of Organization Service Corporation?

A. Well, I was—I think I was chairman of the Association at the time. I, at least, was a director of the Association.

Q. Well, is that the equivalent of saying you were familiar with it?

A. Well, I was very familiar with the employment.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

2184 Trial Examiner Norwood: We will recess until 1:45.

(Whereupon, at 12:10 o'clock p. m., a recess was taken until 1:45 o'clock p. m. of the same day.)

2185 Afternoon Session.

1:45 P. M.

Trial Examiner Norwood: Proceed.

Mr. Stewart: This is off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Let the record show that by agreement of counsel Respondents' Exhibit 32-A to D is being withdrawn and photostats substituted therefor—photostats of the same substituted therefor.

(There were photostat copies of Respondents' Exhibit No. 32-A to 32-D substituted for the original exhibit.)

Trial Examiner Norwood: Proceed.

L. R. QUINN thereupon resumed the stand and testified further as follows:

Direct Examination by Mr. Stewart (Resumed).

Q. Major Quinn, I don't know whether it is clear on the record. Yesterday you said that the form of contract which Mr. Blake prepared was submitted to counsel. Was that your counsel?

A. We—we took the proposed new contract and the contract that we were then using to our counsel and asked
2186 him to compare it and see if there were any objections to the adoption of this new form or whether there were any advantages or disadvantages and—

Mr. MacIntyre: Now, I object to further discussion on that. I did not have an opportunity to object before the witness started his answer. We are not concerned with any discussion between this witness and his counsel concerning—

Mr. Stewart: He is not giving you a discussion.

Mr. MacIntyre: —the problem as to whether he should follow the suggestions of another one of these Respondents.

Trial Examiner Norwood: Read the question and answer.

(Question and answer read.)

Trial Examiner Norwood: Complete your answer.

A. (Continuing.) —and to advise us if there was.

Trial Examiner Norwood: Objection overruled.

By Mr. Stewart:

Q. Now, on whose advice, then, did you decide to adopt the form of contract?

Mr. MacIntyre: I object.

Trial Examiner Norwood: He may tell why he happened to adopt this contract. He is alleging he adopted it for one purpose.

Mr. Stewart: That is right.

Trial Examiner Norwood: He is giving the cir-
2187 cumstances here. He must be permitted to tell his story, his side of the story.

Mr. MacIntyre: It is all right for him to give us the facts of what he did, but to now go into a round-robin discussion of what he and his counsel said about this contract I don't think is proper evidence.

Mr. Stewart: That isn't what I asked him.

Trial Examiner Norwood: He is saying that these are the facts, of his knowledge, so to speak.

Go ahead.

A. Our counsel advised us to adopt the new contract because it was a more modern contract, it was brought up to date, and we adopted it purely and simply on his advice.

By Mr. Stewart:

Q. Now, Major Quinn, referring to the other forms which were recommended by Mr. Blake, and directing your attention for the moment to the specific building job contract, I should like to ask had you had a specific building job form of contract prior to the one that Mr. Blake—

A. No. We relied entirely upon a purchase order. We never—we never published a building contract form because, primarily, our business is with the industrials and not with the building trade.

Q. I see.

A. And we—we required a firm order from the
2188 customer rather than a contract.

Q. Now, I believe you have already explained in answer to an inquiry from the Examiner at some stage that the specific building job contract is essentially an option form of contract; is that—is that—

Mr. MacIntyre: Now, I—

Mr. Stewart: Wait until I ask him a question.

Trial Examiner Norwood: I thought you had completed. Hadn't you?

By Mr. Stewart:

Q. Is that correct?

Mr. MacIntyre: I object to the question.

Trial Examiner Norwood: Wait a minute.

Mr. MacIntyre: It misstates the record.

Mr. Stewart: All right. I will withdraw the question.

Mr. MacIntyre: And it further calls for a conclusion.

Mr. Stewart: I will withdraw the question. It is too hot in this room to—

By Mr. Stewart:

Q. Had the specific building job contract method of doing business been in vogue in the Rigid Steel Conduit Industry prior to the time that Mr. Blake came into the picture?

A. You mean by other companies?

2189 Q. Yes.

A. It had been.

(After a pause.) Well, I might add, Mr. Stewart, that the contracts, as you know, as you prepared them, were revised this year. We—we are now operating under a purchase contract but revised up to date on account of the present conditions.

Q. I had forgotten that.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 63, 64-A to 64-D.")

By Mr. Stewart:

Q. Major Quinn, I show you Respondents' Exhibit 63, which purports to be a letter from Mr. H. S. Walker, chairman, to the members of the Rigid Steel Conduit Association, and ask you to look at it and tell us whether or not you received one of those letters.

A. Yes, sir.

Q. I show you Respondents' Exhibit 64-A to D, ask you to look at it and tell us if you know what it is.

A. This appears to be the original of the contract with the Organization Service.

Q. That is the original contract between Rigid Steel Conduit Association and Organization Service Corporation?

A. And Organization Service Corporation.

2190 Q. You recognize the signatures?

A. I recognize both the signatures.

Q. Of whom?

A. For the Rigid Steel Company H. S. Walker, chairman; and for the Organization Service Corporation Mr. Herbert S. Blake, president.

Mr. Stewart: I offer these documents in evidence (handing to Mr. MacIntyre).

Mr. MacIntyre: No objection to Respondents' Exhibits 63 and 64-A to D.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBITS NOS. 63 AND 64-A TO 64-D were offered and received in evidence.

Trial Examiner Norwood: Is the counsel ready to state his reaction to Respondents' proffer of 60, 61, and 62, for identification?

Mr. MacIntyre: Yes.

I object to 61 and 62-A and B because they are immaterial, and I object to 60 because it is not only immaterial but also is incomplete and incompetent.

Trial Examiner Norwood: I think something was said about another page belonging to 60.

Mr. Stewart: Well, as I recall it, Mr. MacIntyre put in an exhibit without the second page. So far as it 2191 goes, it is admissible.

You notice that that was marked Commission's Exhibit 9 at the top, and I do not know where the second page is.

Mr. MacIntyre: Commission's Exhibit 9 happens to be a set of minutes of the meeting of the Rigid Steel Conduit Association.

Mr. Stewart: I am saying it was originally marked Commission's Exhibit 9. If you will look at the top you will see it.

Mr. MacIntyre: I don't know that I ever asked the Reporters to mark it.

Trial Examiner Norwood: Well, maybe that is the reason it was not introduced.

Mr. Stewart: You mean because the page was missing?

Trial Examiner Norwood: Yes.

Mr. Stewart: I don't know.

Does one of you have another—

Trial Examiner Norwood: Wouldn't you like to have the second page in evidence?

Mr. Stewart: Well, with the understanding that we will provide the second page—

Trial Examiner Norwood: Well, it might have matter on it that is really objectionable.

Mr. MacIntyre: I could not agree to this going in
2192 until that is furnished.

Mr. Stewart: I say, we will submit it.

Mr. MacIntyre: Well, suppose you withhold your offer until you submit it.

Mr. Stewart: Let the Examiner withhold the ruling.

The Witness: Do you want it tomorrow?

Mr. Stewart: Yes.

The Witness: I will have to call my office and have them send it airmail tonight.

Trial Examiner Norwood: Well, it is not necessary. If you can get it in this week I think it will be all right.

The Witness: The quicker I get it over here the quicker I get away.

Trial Examiner Norwood: Well, I think 61 and 62 do reflect these builders' contracts.

Mr. Stewart: Well, the point about it is this: That shows what the Respondent did with reference to this particular price situation, and that it acted as we say on its own judgment, and not as part of any agreement, as alleged in the complaint.

Mr. MacIntyre: Well, there are statements contained, though, in 61 and 62 that are not worth anything in evidence put in in that form. The witness is on the stand, and if he has any reasons to state as to why he took the
action that is indicated in 61 and 62, it would be com-
2193 petent for him to state it from the stand, if he knows.

Mr. Stewart: Well, it is far more competent and it is far better evidence to produce it as of that time, when there was no motive in doing it. Now you argue that he is not showing the facts.

Trial Examiner Norwood: Well, I shall study these over closer. Inasmuch as we are withholding 60 for the second page, I will retain these in my possession.

Mr. Stewart: Very well.

Trial Examiner Norwood: And study them.

Mr. Stewart: I think one is dated March—

Trial Examiner Norwood: January 7 and March 28. That is 61 and 62.

Mr. MacIntyre: Off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Proceed.

By Mr. Stewart:

Q. Now, Major, did you participate in the discussions preliminary to the employment of Organization Service Corporation?

A. I opposed the employment of Organization Service Corporation, and I opposed it up to the actual signing of the contract. As a matter of fact, we were the last company to agree to go along.

2194 Q. Now, do you know of any other terms on which Organization Service Corporation was to act other than those stated in the contract?

A. I do not.

Q. I show you Commission's Exhibit 533, ask you to look at it—which is the document headed "Counsellor"—and state whether or not you ever saw that document.

A. I never have seen this, and I have never heard the word "Counsellor" used in any of our discussions.

Q. Well, look at the second page as well and be sure if you have not seen that.

A. No, I have never seen this before.

There is somebody's pencil memorandum there. That ought to identify whose writing it is.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 65-A and 65-B, 66 and 67.")

By Mr. Stewart:

Q. I show you Respondents' Exhibits 65-A and B, 66, and 67, and as to 65-A and B and 66 I ask you if you are familiar with the documents, 65-A being addressed to you.

A. Yes, these were—these were mailed to me.

Q. Did you receive the enclosure of that letter?

A. I received this letter?

Q. Well, did you receive the letter and the enclosure?

2195 A. Well, is this what you call the enclosure (indicating)?

Q. Yes.

A. Yes, I received them both.

Q. And what did you do with the document marked—well, both documents, 65-A and B and 66?

A. Well, I acknowledged the receipt of them and wrote them a letter acknowledging the receipt and commending them for the service they had rendered.

Q. And what, with reference to the Association, did you do with the document you have in your hand?

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A. It was presented at the next meeting of the Association and made a part of their files. This was a call—

Q. No. Wait a minute.

A. I beg your pardon.

Q. I just asked you to look at it so that you could familiarize yourself.

Mr. Stewart: I offer in evidence 65-A and B and 66, 65-A and B being Mr. Blake's letter to Mr. Quinn transmitting his resignation—rather, resignation of the—yes, his resignation as president and the resignation of Mr. Booth as secretary of the Rigid Steel Conduit Association, Exhibit 65-A stating the reasons that Mr. Blake gave at the time for his severing his connection with the Rigid Steel Conduit Association.

Trial Examiner Norwood: Any objection?

2196 Mr. MacIntyre: I object to the letter, 65-A and B, as incompetent, irrelevant, and immaterial. It is incompetent by reason of the fact that it is a statement of the Respondent Blake in the nature of hearsay here, and he is not here for cross-examination on it.

Mr. Stewart: Well,—

Mr. MacIntyre: As to 66, I offer no objection because it is the notice of the resignation, and I do, however, observe that it is an accumulation of facts already shown, but no other objection to it.

Mr. Stewart: Well, as to the first objection you can dismiss that with ease because Mr. Blake will testify and be subject to cross-examination. Of course, that is not a valid objection to that letter, but that is the answer to the objection, the best one that Mr. MacIntyre could think up.

Mr. MacIntyre: May I suggest that if Mr. Blake is coming on to testify that he can tell us then in so far as it is necessary for him to testify and competent for him to testify to the facts that you are attempting to put in through this letter, 65-A and B?

Mr. Stewart: Well, of course, you would have the argument "You didn't write a letter, did you, at the time? You are thinking that up now, are you?"

Trial Examiner Norwood: Off the record just a minute.

2197 (Discussion off the record.)

Trial Examiner Norwood: Back on the record.

Inasmuch as counsel has said that Mr. Blake is to testify here, and may be questioned about this, I will give

it no further study. I am not saying it isn't admissible in any way. I am not sure about that. But I shall overrule the objection and receive both the exhibits in evidence with the understanding that Mr. Blake will give us some testimony.

Mr. Stewart: Oh, yes, he will testify. No doubt about that.

(RESPONDENTS' EXHIBITS NOS. 65-A and 65-B, and 66 were offered and received in evidence.)

By Mr. Stewart:

Q. Now, Major Quinn, you have in your hand Respondents' Exhibit No.—

A. 67.

Q. —67, which purports to be a bulletin signed by you. Did you send that bulletin to the members of the Association, or was it sent by you—

A. It was sent by my instructions. I didn't send this. This was sent out from New York, but it was sent by my instructions.

Q. Yes.

Now, in that bulletin there is a reference to Mr.
2198 Blake's resignation and what is to be done with the Association after his resignation. Do you recall that part of it?

A. Yes. Yes, sir.

Q. Do you recall what arrangement was made with Mr. Blake after his contract expired on November 1, 1938, with reference to the services of Organization Service Corporation?

A. Well, the Organization Service was practically inoperative, as far as we were concerned, after the expiration of that contract. We—because of the conditions of business and the expense involved, we asked him to accept a minimum fee to act as our counsel and eliminate a lot of records that they had attempted to keep, and one thing and another, and Mr. Blake had presented his side of the case to various members hoping that the contract could be renewed. Several members of the Association had resigned from the Association, or had notified the Association they would withdraw, and my recollection is we paid them $300 a month for the first quarter of 1939. That may be wrong, but that is my recollection.

Q. You mean as to the amount?

A. As to the amount. It was a reduced amount and—

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and I don't recall of more than one conduit meeting in that time, and I am not certain there was even one.

Q. Now, then, from the period from November 1, 1938, when the form of contract which appears to be on an annual basis was terminated, until this date, April 10—or April 19, 1939, upon what basis did Mr. Blake serve the Rigid Steel Conduit Association?

A. As an attorney only.

Q. I see. And on April 19, 1939, he then terminated all connection with the Association, as well as Mr. Booth?

A. And the Organization Service Corporation.

Q. Yes.

Now, after April, 1939—or after the meeting of April, 1939, what was the nature of the activities of the Rigid Steel Conduit Association until it dissolved?

A. Technical only. We maintained Mr. Penn Denton as a consulting engineer, and the efforts were technical only, with the exception of the gathering of the monthly tonnages, which are an abstract fact. They are—

Q. What, if any, difficulty did you have during that period; that is, during that year, in keeping the organization together?

A. The organization at no time was a hundred per cent intact. There was always members—there was always competitors not members. I don't recall of an occasion when every competitor was a member of the Association. During 1939 two or three of the larger interests either had refused to go along or had notified us they would no longer—they would not continue after the termination of their year.

As I recall now, the year ended—the fiscal year ended on April 30th. I know the last year General Electric was not a member, and I—if my recollection serves me correct, when General Electric left, why, Youngstown came in, and that is the way it used to operate, with people resigning and people going out, and we had had several notices—the National Electric Products had notified us they would not further continue; Triangle had notified us they would not longer continue; Cohoes had resigned definitely, and it meant that the—that the bulk of the industry, that is, the majority in tons of the industry, would not be members, and the balance could not afford to maintain the organization, and that is why the organization was closed in May of 1940.

Q. Well, since May, 1940, has there been any effort to revive it?

A. None whatever.

Mr. Stewart: I offer Respondents' Exhibit 67.

Mr. MacIntyre: I would like to ask the witness one question about this.

Mr. Stewart: O. K.

Examination on Voir Dire by Mr. MacIntyre.

Q. Is this last line on this exhibit, Major, a statement put there by the person who received that letter from you?

A. I would assume so. I—it isn't my notation, so I don't know who—

2201 Q. And who would that be?

A. I haven't any idea. I don't know who this was obtained from. It wasn't from our office.

Q. Do you recall the company?

A. I haven't any—how could I? There was no identifying—

2202 Trial Examiner Norwood: This is a circular that this witness sent out?

Mr. Stewart: That is right, sir.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBIT NO. 67 was offered and received in evidence.

Direct Examination by Mr. Stewart (Continued).

Q. And, Major Quinn, referring to the legend on the bottom, "Card Acknowledged and Returned," what is the explanation of the card?

A. It is customary when you send out these calls to meetings to send a mimeographed post card in which you state if you would or would not attend the meeting, and that is what that apparently means.

Mr. Stewart: Do you want to see what that is?

The Witness: It is just an acknowledgment of the receipt.

(A document was thereupon marked for identification "Respondents' Exhibit No. 68.")

By Mr. Stewart:

Q. Major Quinn, yesterday Mr. MacIntyre asked as to whether or not you would not procure the Underwriters

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Laboratories' standard for rigid steel conduit in connection with Respondents' Exhibits 29 and 31.

A. That is correct.

Q. I hand you a document marked Respondents' Exhibit 68 and ask you if that is the document which Mr. MacIntyre requested you to produce.

A. It is.

2204 Mr. Stewart: I offer it in evidence.

Mr. MacIntyre: My only objection to that is the same objection that had been stated to Respondents' Exhibits 29 and 31.

Trial Examiner Norwood: That was the one that was called for at the time that was necessary to compare with the others?

Mr. Stewart: That is right. In other words, these two exhibits—

Trial Examiner Norwood: If the others were received, this will have to be received, too.

Mr. MacIntyre: I say, I have no objection to that other than the objection I made to the other two.

Trial Examiner Norwood: Respondents' Exhibit 68 is received in evidence.

That is a bound pamphlet consisting of how many pages?

Mr. Stewart: Fifty.

Trial Examiner Norwood: Consisting of 50 numbered pages.

RESPONDENTS' EXHIBIT NO. 68 was offered and received in evidence.

Trial Examiner Norwood: Go ahead.

By Mr. Stewart:

2205 Q. Now, Major Quinn, do you know whether or not those standards that you have testified about have been approved by any Government authority?

A. All of the standards of the Rigid Steel Conduit Industry are first referred to Dr. Lloyd, of the Bureau of Standards, and, as a matter of fact, he was the more or less motivating party in the drawing up of the standards.

You see, the Underwriters Laboratories' standards are minimum standards; that is, how low you can go. There is nothing to stop you from going beyond that.

As a direct answer to that, the underwriters only require two one minute dips on zinc, but the industry requires four, which is double the protection.

The Government, of course, has their Government speci-

fications, and it is very necessary that those officers in the Government have something on which to base their specifications. And at any time that Mr. Penn Denton had anything at all in the nature of standards he always brought them down to the Bureau of Standards to have them consider it before it was presented to us.

Mr. MacIntyre: Just a moment.

I move that the last portion of the statement be stricken. He has stated that Mr. Penn Denton always brought what he was to propose to the Rigid Steel Conduit Association down to the Government first. I submit that he is
2206 taking in too much territory there; that he does not know that to be a fact, and we can demonstrate that he does not if you would desire that before ruling on it.

Trial Examiner Norwood: That is a matter for you to cross-examine him on, it seems to me.

Objection overruled.

By Mr. Stewart:

Q. Now, Major Quinn, directing your attention to the subject of competitive bidding on public projects, have you had much experience with that?

A. We usually bid on the public projects.

Q. Does that include United States Government projects in all its departments?

A. It does.

Q. Have you submitted bids on public projects in New York City?

A. You mean on those that called for a bid?

Q. Yes.

A. Yes, we have.

Most of the purchases in New York are done by the Procurement Division.

Q. I see.

A. Which is entirely separate from the branch of the service that called for competitive bids. The Procurement buy in a different manner.

2207 Q. I see.

Well, now, in New York City did you also submit bids on other public projects? I mean other than Government projects, like school buildings?

A. Well, when you say did we submit bids—

Q. I am talking about Enameled Metals.

A. We never submit bids on private projects in our

own name. On a private project it is always bid in the name of one of our distributors.

Q. I see.

A. But in the case of the Government we do not always bid, but we bid often enough so as to keep our name on the active list. If you don't place a bid on so many inquiries, then your name is dropped. And we do keep—we bid often enough to keep our name on the list. But by the same token there may be a half dozen of our customers bidding on the same bid on our product.

Q. Now, what has been your experience and observation with reference to similar bids on Government projects? That is, bids that are alike. Have you observed that that took place?

Mr. MacIntyre: I object to the question as too indefinite, too general.

Mr. Stewart: I am asking if he knows what takes place.

Mr. MacIntyre: Knows what?

2208 Mr. Stewart: Knows that they are similar bids.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

A. Largely on every bid—

By Mr. Stewart:

Q. No. The question is, have you observed it?

A. Yes, I have.

Q. Now, can you give any reason based on your experience in the conduit business as to why there will be similar bids on Government projects?

A. The fact that you publish a price card and a freight bulletin, they all should be in accord with their card, and if the cards all happen to be the same, which is sometimes the case, then all bids should be identical.

Q. Now, what, if anything, has the policy of the Government with reference to open bidding done to bring about similar bids?

A. Just what do you refer to?

Q. What effect, if any, does the open bidding policy of the Government have on your trade generally?

A. You mean open bidding, the request for a quotation?

Q. Yes.

Mr. MacIntyre: I object to that question. It calls for

the conclusion as to what the effect is on the trade
2209 generally. This man can tell us what it has done to him, if he knows.

Mr. Stewart: All right.

In your own business. That is what I am talking about.

The Witness: Well, I do not know that I quite get what you are asking.

Trial Examiner Norwood: With respect to producing identical prices.

The Witness: I understood you to ask me what effect it had on our business.

Trial Examiner Norwood: Is there anything about the Government—

Mr. Stewart: Policy.

Trial Examiner Norwood: —business or policy, or method which would tend to produce similar prices? If so, state factually what that is.

The Witness: I have answered that. The fact that there are price cards and freight bulletins, if a man quotes off his price card and his freight bulletin, they should be the same, providing the cards are the same.

Then Mr. Stewart asked me a question about open bids and the effect on our trade.

I would like to have that question read again.

Trial Examiner Norwood: Is the Government busi-
2210 ness any different from your other business where you file bids?

The Witness: Oh, very materially, because the Government bids are published and the private bids are not.

Trial Examiner Norwood: What are those differences?

The Witness: Well, the Government bids are published.

Trial Examiner Norwood: I see.

The Witness: And naturally you are going to bid your published price; otherwise you are going to tell the whole world you are cutting prices. Whereas on a private bid you can cut the price and nobody but you and the customer knows it.

Trial Examiner Norwood: Proceed.

By Mr. Stewart:

Q. Major Quinn, I show you Commission's Exhibits 318 to 330, inclusive, and 334 to 364, inclusive, which are the schedules of Panama Canal bids and the abstract of bids on other governmental projects, ask you to look at

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them and tell us whether you can account for the bid of Enameled Metals Company on those various projects.

2211 By Mr. Stewart:

Q. Major Quinn, have you examined the exhibits?

A. I have.

Q. And you are familiar with the—strike that out, please.

What, if anything, did you have to do with the bids put in by your company under those—in those documents?

A. All of these requests for bids come over my desk, and if we care to quote I turn them over to the head of my order department and she figures the prices from our price cards and then they bring them to me for signature or to one of the other officers for signature, whoever happens to be in the office, and they are submitted,

Q. Now, what, if any, agreement did you have with any of your competitors with regard to your bid on those exhibits?

A. None whatever.

Q. I notice on those exhibits the terms as to discount. I direct your attention to that.

In your experience with Government bidding—look at the other exhibits—you notice that?

A. Yes.

Q. In your experience in Government bidding what, if any, effect has been given by the Government officials to the matter of discounts in determining whether or not the bid is identical?

2212 A. The Government seems to award the contract to the one giving the most favorable terms of payment. In other words, if one man quoted 5 percent 10th of the month prox., another man quoted 30 days—30 days 5 percent, another quoted 30 days after arrival—and that is very applicable to the Panama Canal—whoever is passing on the bids figures—seems to figure out—I, of course, am not a member of that department and I am not certain how they go about it, but the results of their awards would lead anybody to believe that they attempted to give it to the concern giving the most favorable terms of payment to the Government. Now, on the face of the bid often it looks like one man's bid is not as favorable as another, but in the case of 30 days after arrival and things of that kind the Government seems to determine whether or not

it will be shipped in a week and take another week to go to Panama, and then add the 30 days and then compare that with the man that quotes 15th of the month prox., and if you ship it on the first of the month it may be that 15th of the month prox. is more desirable terms than the 30-day arrival, but as near as I have been able to see, the Government always awards it to the person with the most favorable terms of payment.

Trial Examiner Norwood: That is in the case that the prices are identical?

The Witness: Yes. Yes.

Mr. MacIntyre: I move to strike from the record
2213 that portion of the witness' statements which has dealt with probabilities, beliefs, opinions, and what seems to him to have been reasons for someone else doing the things that he has just described.

Trial Examiner Norwood: I think it would be more satisfactory if you give your experience about that.

Mr. Stewart: That is what I understood he was giving us. That is what I asked him.

Trial Examiner Norwood: Based on your experience with the Government.

The Witness: Mr. Norwood, the insurance companies publish a form after every Government bid in which every bid that is made is listed and, naturally, as a manufacturer we compare the terms of the bids, and if—here is a bid here that was many—exactly the same. If one was awarded the contract we would attempt to find out why, and that would bring out the fact that they gave better terms of payment than the other. That is the result of my own experience. But how they arrive at it I don't know. That is what I was trying to say.

By Mr. Stewart:

Q. What I was trying to get at was, has it been your observation in studying the bids and awards that the result which you have testified previously about has taken place?

A. That is correct.

Trial Examiner Norwood: I will overrule the
2214 objection.

By Mr. Stewart:

Q. Now, based upon your experience and upon such sources of information as you have available to you in

your business, what would you say has been your experience with competitive bidding in New York City over the last 10 years, let us say?

Mr. MacIntyre: I object to that unless the question goes to this man's experience as to—and knowledge as to matters of his own business or matters of anyone else's business about which he can on cross-examination give us further details and bases for the statements that he gives in response to the question.

Mr. Stewart: Of course, that is not a ground for objection. That is a chance I take on getting my witness into trouble by asking him the wrong questions.

Trial Examiner Norwood: Well, I think the question should be what his experience is with respect to what? With respect to—

Mr. Stewart: Well, I will withdraw the question.

Trial Examiner Norwood: Yes.

By Mr. Stewart:

Q. Mr. Quinn, what has been your experience with competitive conditions in New York City in the Rigid Steel Conduit business during the past 10 years?

A. New York has always been, to my knowledge, 2215 the most unsettled point in the conduit industry. It seems to be the dumping ground of surplus materials.

Mr. MacIntyre: I object to further statements of what it seems to be to this witness.

Mr. Stewart: Oh, well, now, that is just—

Mr. MacIntyre: Let us—

Trial Examiner Norwood: I do think that the witness, if he is going to tell us about this condition, he must—

Mr. Stewart: All right.

Trial Examiner Norwood: —be a little more specific.

By Mr. Stewart:

Q. Be a little more specific, then, Major, as to what has taken place in New York City, and Mr. MacIntyre objects to your saying—

Trial Examiner Norwood: Motion is allowed to strike that part of his answer.

Mr. Stewart: All right.

Trial Examiner Norwood: Now, he may start over again.

A. We are constantly opportuned by our customers and

our own agents to give them special prices for jobs in New York City, and I don't recall of any job that our company took in the City of New York in the last 10 years previous to the filing of this complaint that there was
2216 not some concession made, on any job of any material size; and that was—and those prices were made to meet competitive conditions as they were presented to us.

Q. Now, what, if anything, has the conditions which have developed since, let us say, 1939 when you sent out your notice which I offered in evidence a moment ago—what effect has that had on conditions in New York City?

A. Well, I—I would have to look at that.

Q. The one of September, 193—

A. By the way, I got to telephone for that, too.

Q. Oh, that is right.

A. Since the early part of this year there has been little or no request for special prices.

Q. And why is that?

A. Because all of us—because we as a company are oversold, and we are many weeks behind with our deliveries, and, of course, when you can't keep up with your orders you do not sell at a reduced price.

Q. And what is the oversold condition due to?

A. Due to the national emergency and the—the Government programs.

Q. Now, what has been your experience and observation as to competitive conditions in Chicago?

A. We do little or no business in Chicago. We—because of the differential in the freight, we have
2217 avoided all business in Chicago that we can. What little we do our agents are constantly telling us—

A. (Continuing.) —that the price or prices quoted
2218 in competition are below the published card, and that is even true of the present.

Mr. Stewart: Mark these, please.

(Documents were thereupon marked for identification "Respondents' Exhibits 69, 70-A to 70-F, 71-A and 71-B, 72-A to 72-E, 73-A and 73-B, 74-A and 74-B, 75, 76-A and 76-B, 77, 78, 79, 80, 81, 82, 83, 84-A and 84-B, 85-A, 85-B, and 85-C, 86, 87, 88, 89, 90, 91-A and 91-B, 92, 93, 94, 95, 96, 97-A, 97-B, and 97-C, 98-A and 98-B, 99-A, 99-B, and 99-C, 100-A and 100-B, 101, and 102.")

Trial Examiner Norwood: Proceed.

By Mr. Stewart:

Q. Major Quinn, I show you Respondents' Exhibits 69 to 102, inclusive, and as to Exhibits 76 to 102, inclusive, I will state to you that you have already seen these documents and you are familiar with them. I would like you to look at Exhibits 69 to 75, inclusive, and tell us whether or not those documents came to you in the due course of business.

A. (After examining the documents.) Yes, sir. They are out of our files.

Q. Now, I should like to ask you first as to who C. W. Chapman is.

A. Mr. Chapman is a member of the firm of Fulweiler & Chapman. They are our manufacturer's agents in Atlanta, Ga.

2219 Q. Now,—

A. I am trying, Mr. Norwood, to explain the manufacturers' agents as separate from agents, so—for your benefit in reading the—

Q. Now, is J. P. Fulweiler the other member of the firm?

A. J. P. Fulweiler is the other member of the firm.

Q. And who is Milton Smith—or who was Milton Smith?

A. Milton Smith was our manufacturer's agent in New York. His firm was known as Smith & Fetten.

Q. Is he living or dead?

A. Mr. Smith is dead.

Q. Now, who is Franklin Electric Company?

A. Franklin Electric is the jobber in Atlantic City.

Q. Now, what, if any, connection does it have with your company?

A. He has a consigned stock contract with us.

Q. And who is J. G. Fetten?

A. J. G. Fetten is the other member of the firm of Smith & Fetten.

Q. And they are what in—what is their official connection, if any, with your company?

A. I have already testified they are the manufacturers' agents in New York.

Q. I am sorry. I didn't catch that.

Now, who is the Corey Company, Inc.?

2220 A. The Corey Company is the New York representative of the National Enameling & Manufacturing Company.

Q. Now, Major Quinn, I call your attention to Respondents' Exhibit No. 102 and ask you how you received that document?

A. This was sent in to us by an agent and he obtained it some place in the field.

Q. Well, when you say "an agent," do you mean your agent?

A. Our agent; yes.

Q. I ask you to look at Exhibits 69 to 75, inclusive, so as to familiarize yourself with the contents of them.

A. (After a pause.) These are all letters concerning past transactions, bids in the field—that is—and that is—their being reported to us as to the price our competitors have quoted or are quoting.

Q. Well, what I want to know is to have you state whether or not they have to do with competitive conditions in the localities in which the letters come from.

A. They do.

Q. And is the same true as to Exhibits 76 to 101, inclusive, with the exception of 81, which has to do with a concern which is not involved in this case?

A. Well, I—I don't know that every one of them individually refers to a competitive condition. I would state that they—that these are the ones I sorted out in Pittsburgh, and I think they all do, but I—I—there might
2221 be some other matter in here than competitive conditions. I would have to read every letter to determine. I would say offhand they all do refer to competitive conditions.

Mr. Stewart: Now, I offer in evidence the Exhibits 69 to 101, excepting 81, which, as I say, has to do with a matter which is not relevant in this case, and I also offer in evidence 102. All of these documents are offered for the purpose of showing competitive conditions which influenced Respondent Enameled Metals Company in its actions in this case.

Trial Examiner Norwood: Off the record just a minute.

(Discussion off the record.)

Mr. Stewart: Mark these while we are waiting.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 103, 104, 105, and 106.")

Mr. MacIntyre: I would like to ask the witness a question about one or two of these.

Trial Examiner Norwood: Go ahead.

Examination on Voir Dire.

By Mr. MacIntyre:

Q. Major Quinn, referring to Respondents' Exhibit, for identification, 89, can you tell me where the letter is that is referred to in there as being dated the 27th of
2222 July, 1939, and as being highly confidential?

Mr. Stewart: It is right there.

Q. If it is not in this group, can you tell me where it would be?

A. I cannot. That letter is not mine. It was somebody else's letter.

Q. Is this Exhibit 90, for identification, the one that is referred to there?

A. I would say that it is.

Q. I would like to ask you another question, Major. Referring to Respondents' Exhibit, for identification, 100-B, who is the "M.G.S."?

A. Milton G. Smith.

Q. Who is he?

A. He is our agent in New York—he was our agent. He is dead now, but he was our agent. He was a member of the firm of Smith & Fetten.

Q. When you say he was your agent, you mean he is a man who has operated as a jobber of conduit under a consigned stock agreement?

A. He was a manufacturer's agent. I have already testified to that.

Q. How long has he been dead?

A. He died last August.

Mr. MacIntyre: In this pending offer, as to Re-
2223 spondents' Exhibit 72-A to E, I offer no objection.

As to all of the others, they are objected to as irrelevant, immaterial, and as highly incompetent. They are incompetent because they carry statements which are hearsay down to the third and fourth and fifth degree. For example, I call your attention to Respondents' Exhibit 99-A, B, and C in which some writer who is not here, and apparently is not available for cross-examination, or even as one who may be cal ed as a witness for the Commission if they desired to call him as their own witness in rebuttal—

Mr. Stewart: Mr. Smith is dead, of course. That does not bother Mr. MacIntyre.

Mr. MacIntyre: —in which the statements are made, through conversations that they had had the previous day with someone in some company they learned that those people had been told by someone else that prices on conduit had been made to someone at below the card.

I submit that that is going around Robin Hood's barn in an effort to bring in some evidence here to indicate that these Respondents are not making sales at card. That is the general nature of the competency of this evidence, if you please.

Now, as to the relevancy and the materiality, from all that I can gain through my reading them, they are offered,

or at least it is indicated that they are offered for the
2224 purpose of attempting to show that Respondents do

not adhere to the cards that they put out; that they do not make all of their sales in accordance with the cards. They are not relevant to any issue in the complaint on that score, even if they were competent and could be accepted as good evidence, because the complaint does not allege that this combination of price fixers is 100 percent perfect. In fact, I showed in evidence that I put in that occasionally they did get off the beaten path, they did not adhere 100 percent to their price-fixing scheme, and it gave rise to new arrangements that they had to enter into in order to accomplish their purpose of maintaining their price-fixing methods and schemes. Consequently, this does not meet any issue either as to evidence or charges in the complaint; and if it did it would not materially meet it, because such a fragmentary showing as can be made by these exhibits, even if they were competent and relevant, would most certainly be immaterial, because they do not represent but a very, very small percentage of the total conduit sold in the United States.

Trial Examiner Norwood: Is this—

Mr. MacIntyre: Just worthless as evidence.

Trial Examiner Norwood: All the way to 102, is this the whole lot of them?

Mr. MacIntyre: Exhibit 72, which was not objected to.

2225 Trial Examiner Norwood: May 72 be taken in, then, separately?

Mr. Stewart: That is admissible.

Mr. MacIntyre: So far as I am concerned, it may.

Mr. Stewart: He might find something in it he likes.

Trial Examiner Norwood: Well, Respondents' Exhibit 72-A to E, for identification, is received in evidence by agreement.

RESPONDENTS' EXHIBITS NOS. 72-A to 72-E were offered and received in evidence.

Mr. Stewart: Now, Mr.—

Trial Examiner Norwood: Wait a minute.

Mr. Stewart: Oh, I am sorry. I thought—

Trial Examiner Norwood: Now, as to the others, it will be necessary for me to retain them until tomorrow and reserve the ruling on them. I will have to study the papers.

Mr. MacIntyre: In connection with your study of them, if Your Honor please, I want you to particularly note the hearsay character and the uncertainty with which many of the statements are made.

Trial Examiner Norwood: I will note everything about them that—

Mr. MacIntyre: And the fact that—

2226 Trial Examiner Norwood: —bears on their admissibility.

Mr. MacIntyre: And that many of the letters are written by parties who are not directly before us here as Respondents but are jobbers and wholesalers that are concerned with this case only indirectly in that they are represented by other Respondents here.

Trial Examiner Norwood: Is there anything you want me to note especially?

Mr. Stewart: No, not a thing, sir.

Mr. Austin: I would like to ask you to note the argument and trial briefs being filed this afternoon by Mr. MacIntyre on the other side of the case.

Trial Examiner Norwood: That is what he is here for. Proceed.

The Witness: Mr. Stewart, may I correct one statement Mr. MacIntyre just made?

Mr. Stewart: No. No.

Trial Examiner Norwood: No.

Mr. Stewart: We will correct it later on. Don't worry about that.

Trial Examiner Norwood: Leave that to the lawyers.

Mr. Stewart: I show you—you can tell later. I will correct them tomorrow.

2227 By Mr. Stewart:

Q. I show you Respondents' Exhibits 103, 104, 105, and 106 and ask you to look at them and tell us whether or not you are familiar with the documents.

A. Yes, sir.

Q. Major Quinn, are Exhibits 10—

A. 3?

Q. No. 104, 105, and 106 the enclosures referred to on the bottom of 103?

A. Yes, sir.

Q. Are you familiar with that—I mean the letter 103, the carbon, rather, was written by whom—the original of which 103 appears to be a carbon was written by whom?

A. It was dictated by me.

Q. And sent by you to whom?

A. To Mr. H. S. Blake.

Mr. Stewart: Offer these documents in evidence.

Mr. MacIntyre: As to Respondents' Exhibits 103 to 106, inclusive, for identification, all objections that I have stated to Respondents' Exhibits, for identification, 69 to 71, inclusive, and 73 to 102, inclusive, would apply equally to these, 103 to 106, and in addition to that I would say that they are self-serving; they are statements by this witness on the stand; there is no need, therefore, for them to be offered. That is particularly true as to 103.

2228 The others are written by persons not here and subjected to cross-examination. It seems to me that it is almost unbelievable that counsel would ask us to take into evidence here documents of that character and under the circumstances that they are now being offered. I just can't understand it.

Mr. Stewart: Well, the room is pretty warm. That may account for it.

Trial Examiner Norwood: Well, inasmuch as these are equally objectionable, I will have to give them an equal amount of study. (Laughter.)

So I will reserve it.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: I think that we might as well—

Mr. Stewart: Now, I should like to ask Mr. MacIntyre to give me the letter from Mr. Austin to Mr. McAuliffe in his possession, which is dated June 20, 1938, and also

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the letter from Mr. McAuliffe to Mr. Austin, dated June 17, 1938.

Mr. MacIntyre: The June 20 letter, who is that from?

Mr. Stewart: Austin to McAuliffe. Austin is dead.

Mr. MacIntyre: The next one is what?

Mr. Stewart: McAuliffe to Austin, dated June 17,
2229 1938. I don't want it right at this moment. I mean, if you will get it for me overnight I will appreciate it. You have it.

Trial Examiner Norwood: Is that all?

Mr. Stewart: Well, for the moment. I mean, it would take me some time to get some documents again, and I think we might as well—

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:05 o'clock p. m., December 2, 1941, the hearing in the above-entitled matter was adjourned.)

2232 Proceedings.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is now reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., on the 3d day of December, 1941.

Please note the appearances.

Mr. MacIntyre: If Your Honor please, before any ruling is made about the pending offer, I would like to see the documents in that offer for a moment.

Trial Examiner Norwood: All right (handing documents to Mr. MacIntyre).

I think we have argued that sufficiently, and I have studied those overnight, and I am ready to rule on them now. If there is anything very special you wish to call my attention to, you may do so.

Mr. MacIntyre: I just want to call your attention to these facts concerning the pending offer, which gives rise to an additional objection I have not as yet stated.

I call your particular attention to Respondents' Exhibit

70-A to F, F being a tabulation, or what purports
2233 to be a tabulation of bids, and to Respondents' Exhibit, for identification, 71-A and B, with A being what purports to be a tabulation of bids. Now, Respondents would like to have us bound by a showing that the tabulation of bids purported to be set forth on those two sheets of paper are accurate and correct, that all statements therein are true. They haven't produced the man who made the tabulation, they haven't produced the bids. It is within their power to do so; they have copies of their bids in their files. We don't have them. These agencies are not in Washington. It is a matter of fairness that is involved here as well as legal technicalities.

Mr. Stewart: May I suggest as to Exhibit 70 Mr. MacIntyre expressly stipulated yesterday he had no objection to it.

Trial Examiner Norwood: No. That is 72. That has been received in evidence.

Mr. Stewart: Yes.

Mr. MacIntyre: But this is 70 and 71.

Mr. Stewart: 72?

Mr. Gilpatric: 70 and 71, he said.

Mr. Stewart: I thought he expressly stipulated he had no objection to it.

Mr. Gilpatric: No; it was another exhibit.

Mr. Stewart: Was it?

2234 Mr. MacIntyre: We have never asked the Respondents to grant us any such privilege and license as they are attempting to force on us.

Trial Examiner Norwood: We don't receive any tabulations unless the supporting data is presented to the other side or is available to them.

Now, I think that a reasonable amount of this might come in to show competitive conditions here but not to establish the truth of these statements, these hearsay statements contained in the documents.

Mr. Stewart: That is what it is offered for.

Mr. MacIntyre: What is it offered for, Mr. Stewart?

Mr. Stewart: To show competitive conditions which operated on the mind of the manufacturer in meeting those conditions.

Mr. MacIntyre: And not to show that the bids were as are purported to have been through these documents?

Trial Examiner Norwood: I think that your exhibit would be perfectly intelligible without these tabulations.

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Mr. Stewart: I have no objection if you want to take it out.

Mr. MacIntyre: Those are two samples that I have called to your attention. There are others in that group.

Trial Examiner Norwood: Well, there are statements here as to what people bid here, but he has made it
2235 definite as to just who it was and—I will reserve the ruling on this until I give this a little further study. Go ahead.

L. R. QUINN resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Stewart.

Q. Major Quinn, you have called my attention to—

By Mr. Stewart:

Q. You called my attention to a question and answer in your testimony at page 2121 of the record; is that not correct?

A. That is correct.

Q. In which the question appears:

"And from the standpoint of cost, what direction did your cost take?"

And your answer as it appears in the record is as follows:

"If you raise the price of a product, and if you reduce the productive capacity of your plant at the same time, you naturally increase your cost."

Now, how should that read?

2236 A. If you increase the price of your labor and reduce the productive capacity of your plant at the same time, it increases the cost of the goods.

Q. Now, Major Quinn, I show you Respondents' Exhibit 58, which is a document about which we were inquiring yesterday. Will you explain in detail just exactly what you did in procuring the data shown on Respondents' Exhibit 58?

A. I have a copy here.

Q. All right.

2237 By Mr. Stewart:

Q. Major Quinn, yesterday you testified with reference to your recollection as to the arrangement which

was made with Mr. Blake in November or December, 1938. Do you remember so testifying?

A. Yes, sir.

Q. And, as I recall it, you were uncertain as to the exact arrangement with Mr. Blake.

A. As I recall, I testified that my recollection was that it was on the basis of $300 a month.

Q. Yes.

Now, I show you—

2238 (A document was thereupon marked for identification "Respondents' Exhibit No. 107.")

By Mr. Stewart:

Q. (Continuing.) —Respondents' Exhibit 107, ask you to look at it, and tell us if you can what that is.

Let me put it the other way: Do you recall receiving the original of that letter from Mr. Blake?

A. Let me read it first.

Q. All right.

A. Yes, sir; I do.

Q. All right.

Now, does that correctly state the arrangement which was made between Rigid Steel Conduit Association and Mr. Blake, or his organization, at the date of the termination of the original contract with Mr. Blake, or, rather, with Organization Service Corporation?

A. It does.

(Mr. Stewart hands the document to Mr. MacIntyre.)

Mr. MacIntyre: No objection.

Mr. Stewart: All right.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBIT NO. 107 was offered and received in evidence.

By Mr. Stewart:

2239 Q. Now, Major Quinn, directing your attention to the matter of freight bulletins which are used by Enameled Metals Company: As I recall it, in your testimony in answer to Mr. MacIntyre's question, you said that your company prepared your own freight bulletins and had your own traffic department. Is that correct?

A. That is correct.

Q. Now, from what source does your traffic department obtain its information?

A. There are rating bureaus who act in conjunction

with the Interstate Commerce Commission. There is the Central, the Southern—I am not enough of a traffic man myself to name them all, but the different sections of the country have these rating bureaus that prepare and publish not only the rates on conduit but the rates on every product into several volumes.

Now, we have one four-door steel cabinet in the office that is filled entirely with these published rates, which are published with the sanction and with the consent of the Interstate Commerce Commission, to afford the shippers access to the actual rates, and a traffic man can refer to those books and give you the rate on any known product. When I say "any known" I mean any—I assume it covers every product—but any ordinary product wou would want to look up we can give you the rate from any one point to another.

2240 Q. Now, what is the nature of the purpose that you seek to have your freight bulletin serve so far as your own company is concerned?

A. We publish the more or less key towns, or the towns to which we would ordinarily be called upon to ship. We can't publish all of them. We do not attempt to. We publish representative towns and in representative sections of each State. And if—

Q. Now, then, in case your publication does not have the rate that you desire, where do you get it from?

A. We get it from these rating books that the traffic department has in our office.

Q. Now—

A. You understand, Mr. Stewart, that any customer in the field can get that same information from any responsible freight agent.

Q. Yes.

Well, now, then, do you know of any instance in your experience in the conduit business in which your company has knowingly charged a customer—rather, used an erroneous freight rate?

A. I do not.

Q. What would you say as to the use of erroneous freight rates as a matter of business policy?

A. Well, I have always been of the impression 2241 that it was against the law to sell on erroneous freight rates.

Mr. MacIntyre: I move that the last answer be stricken. It calls for an opinion not only of facts but of law.

Mr. Stewart: I think he can state—it makes no difference whether he is right or wrong about the law—what his business policy is. It is a matter of erroneous freight rates.

Trial Examiner Norwood: I think he can give that.

Objection overruled.

Mr. MacIntyre: May we have the question and the answer read?

Trial Examiner Norwood: Motion denied, rather.

Go ahead.

Mr. Stewart: Go ahead, Major.

The Witness: Well, I think I answered the question, didn't I?

Trial Examiner Norwood: Yes, he answered. The motion was to strike the answer out.

Mr. Stewart: Oh.

By Mr. Stewart:

Q. Now, Major Quinn, what advantage or disadvantage is there in the purchase of material f.o.b. mill?

A. You mean as to freight or—

Mr. MacIntyre: I object. The witness is not in
2242 a position to tell us as to all purchases, what advantages that they can secure for themselves in purchasing one way as against another. If he were in their position and purchasing from him, from his plant, he could probably tell what advantage it would be to him, or what he had realized as advantages, but it just calls for incompetent speculation.

Trial Examiner Norwood: Well, he can give his reasons for shipping f.o.b. mill or not shipping f.o.b. mill, or preferring one over the other.

Mr. MacIntyre: That is a different question. I objected to the question of Mr. Stewart.

Trial Examiner Norwood: Well, that would be eliciting that same information.

I will sustain the objection to the question in its present form.

2243 By Mr. Stewart:

Q. Major Quinn, in your experience in the conduit business, have you had an opportunity to observe the advantages to buying f. o. b. mill?

A. I have.

Q. State what they are.

A. The disadvantage in buying f. o. b. mill is the fact that the jobber, or the consumer, whoever purchases, has to pay the freight immediately upon the receipt of the goods. Where he buys material delivered we prepay the freight, and, as our terms are 5 percent the 15th of the month following, he has virtually the use of our money for that interim. Personally, I could never understand
2244 why a man would buy f. o. b. mill and pay the freight.

Q. Well, now, let me ask what has been your experience and observation as to the desires of your customers as to whether they desire a delivered price or otherwise?

Mr. MacIntyre: Now, I submit that the best evidence here is a statement of the desires of the customer as made to us by those customers and not some thought by this witness as to what those desires are. We are just wandering completely around.

Trial Examiner Norwood: I think he may give any facts within his possession which may indicate the desires of the customers, but I don't think he can testify directly as to these inner and hidden desires.

Mr. Stewart: Of course, I am not asking him that. I am asking him what has—

Trial Examiner Norwood: What are the facts? Did they ask for one method over another, or just what?

The Witness: They distinctly order the material either delivered or f. o. b. mill, as they please, and inasmuch as better than 80 percent of our material is shipped delivered, 80 percent of the customers must desire it delivered.

Mr. MacIntyre: I move that the last portion of it be stricken. It is a conclusion that they must desire it, on the basis of the fact.

Trial Examiner Norwood: Motion denied. You may
2245 cross-examine him on that.

Read that last answer again.

(Answer read.)

Trial Examiner Norwood: I think that I was wrong in denying that motion as to striking part of that. It is just clearly an inference there he is drawing from the facts he is giving, and in reflecting on it I saw I had made a mistake.

The motion will be allowed as to striking all of the previous answer beginning with—strike the remark "80 per-

cent of the customers must desire the goods shipped delivered."

Mr. Stewart: Now, how is the answer?

Trial Examiner Norwood: Where his testimony should stop is what percent of the customers ask for such delivery.

Mr. Stewart: Now, how does the answer stand in the light of that decision?

(Answer, as amended, read by Reporter.)

By Mr. Stewart:

Q. Major Quinn, to what extent do your customers buy f. o. b. mill and to what extent do they buy on the delivered price basis?

A. Slightly less than 20 percent buy f. o. b. mill. The balance, slightly more than 80 percent, buy delivered.

Mr. Stewart: That is just a question of your 2246 process of reasoning.

Trial Examiner Norwood: Well, is that pursuant to their requests—

The Witness: Yes.

Trial Examiner Norwood: —or your policy?

The Witness: Yes.

Trial Examiner Norwood: Which?

The Witness: It is their request. They have the option of buying either f. o. b. mill or delivered or consigned, any way they please.

By Mr. Stewart:

Q. I now call your attention to Commission's Exhibit 404 and ask you to look at it for the purpose of considering the situation referred to in that letter.

A. You mean as to reference of the effective date of the—

Q. Yes. Now, what I would like you to explain is why—this letter states—it is from Mr. Donley to Mr. Booth—

"Today we received about the last of the railroad tariffs for the conduit schedule, and they include rates into Florida but do not become effective until April 18th. We have decided to carry the effective date of the new schedule as April 25th unless I hear otherwise from the Transportation Committee who are receiving copies of this letter."

Mr. MacIntyre: What is the number of that exhibit?

Mr. Stewart: 404.

2247 By Mr. Stewart:

Q. Can you explain why the effective date of that new schedule, as stated in the letter, would be April 25th rather than April 18th?

A. It has always been the policy of our company to give the customer the lowest price in effect during the month, and our month ends with the 24th, and so if the freight rate advanced during the month we would be—we would bill it on the old freight rate up to and including the shipments of the 24th and would make the new freight rate effective on the 25th.

Q. Major Quinn, has your company—or, how long has your company used the basing-point system, to your knowledge?

A. To my—my own knowledge is, of course, limited to my connection with the company. That is 1919.

Q. Well, has it used it ever since?

A. Ever since, yes.

Q. Do you have any agreement with any of your competitors to use that basing point?

A. No, sir.

Q. Do you have any agreement with any of your competitors to maintain it?

A. No, sir.

Q. Do you know of any agreement in the rigid conduit industry which would prevent any manufacturer from establishing a new plant at any point and establishing a new basing point?

2248 Mr. MacIntyre: I object to this question. I could have objected if I had time to a couple of the other questions, asking for conclusions as to whether agreements were entered into. They call for conclusions rather than statements of fact from which we could determine and the courts could determine whether the facts add up to an agreement.

I object to this question on the further ground that it calls for speculation on the part of the witness as to whether or not there could be an agreement among anyone in the industry which would prevent or could prevent the establishment of mills or basing points at some other locations.

Trial Examiner Norwood: Read the question.

Mr. Stewart: That isn't what I asked him.

Trial Examiner Norwood: Read the question.
(Question read.)
Trial Examiner Norwood: Objection overruled.
A. I do not.

By Mr. Stewart:

Q. Do you know who established the Evanston or Chicago basing point, which company?
A. The Clayton Mark.
Q. Now, do you know of any—now, when was the Evanston base established—do you know—by Clayton Mark?
A. I would have to just make a guess. I would think about—

2249 Mr. MacIntyre: I object to the witness guessing.

By Mr. Stewart:

Q. No. Don't guess. What is your best recollection?
A. My best recollection is about 1924 or 5, but that is just my recollection.
Q. Now, was there—that was during the time you were in the conduit business?
A. That is correct.
Q. Do you know of any agreement between your company and Clayton Mark or any other company which established the basing point as to the establishment of an Evanston base?
Mr. MacIntyre: This question is objected to because it calls for a conclusion rather than a statement of facts.
Trial Examiner Norwood: Read the question.
(Question read.)
Trial Examiner Norwood: Overruled.
A. I do not.

2250 By Mr. Stewart:

Q. Major Quinn, do you know of any agreement among the manufacturers of rigid steel conduit by which you are restricted to any territory within which you may sell your products?
A. I do not.

2251 Q. Now, Major Quinn, will you describe the methods by which your company sells rigid steel conduit from the standpoint of your sales organization, sales outlets, sales method?
Mr. MacIntyre: I object to the portion of the question that calls for information as to the organizational set-up

of this company. Conceivably in answer to that he could give us the names of all of his salesmen and the amount that he pays them and where they operate and all of that. I don't think we ought to go into that sort of a story right now.

Trial Examiner Norwood: Read it.

(Question read.)

Mr. MacIntyre: The question is too broad.

Trial Examiner Norwood: I will ask the witness to describe that briefly.

Mr. Stewart: Of course, I don't expect—

Trial Examiner Norwood: Just give us the essential points there, and I will overrule the objection and ask him to answer it.

The Witness: We attempt to employ manufacturers' agents in every key section, and they solicit the business on a commission basis. We have no salaried agents. We sell only to jobbers, Government agencies, and in some rare cases to industrials. We attempt not to sell the contractor direct. It is optional with the customer whether he buys outright or buy on consignment. He can elect his own method of purchasing, as far as we are con-
2252 cerned. I think that is essentially the—

By Mr. Stewart:

Q. Well, now, Major Quinn, I should like to ask you if there is any significance to your language, "We attempt to employ manufacturers' agents in every key city." Do you employ manufacturers' agents?

A. Wherever it is possible to obtain a capable man with experience we employ him, and that is what my word "attempt" means.

Q. Well, that is clear.

Now, do you advertise your product?

A. To a limited degree.

Q. In what way?

A. In the trade papers.

Q. Do you use any additional form of advertising in the form of booklets or any matter of that nature?

A. Of our own?

Q. Yes.

A. Yes. We—have a series of envelope stuffers describing the products and the essential advantages, and at times we have published other—other articles and things of that kind describing our product and its advantages.

Q. Let me ask you whether or not at any time did the Rigid Steel Conduit Association, as an associatiton activity, publish any document with relation to rigid steel conduit?

2253 A. I have already testified that they did, that we engaged the services of some advertising men upon Madison Avenue—advertising firm.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 108 and 109.")

Q. I show you Respondents' Exhibit 108 and ask if you can identify that document.

A. This was—this was published by the Association through its secretary, Mr. Sicard.

Q. Well, I call your attention to the time of the publication and ask you whether or not that was a product of the trade extension committee of the Rigid Conduit Section of NEMA?

A. That is correct.

Q. I show you Exhibit 109 and ask you if you recognize that document?

A. This is the booklet that was prepared by the advertising firm that we engaged. This, of course, is a fact-finding report by the Electrical Testing Laboratories.

2255 (Documents were thereupon marked for identification "Respondents' Exhibits Nos. 110 and 111.")

By Mr. Stewart:

Q. Major Quinn, I show you Respondents' Exhibits 110 and 111, which appear to be addressed by Dun and Bradstreet, Inc. to members of the Rigid Steel Conduit Industry, and ask you whether or not you received those letters in due course (handing the documents to the witness).

A. Yes, sir.

Q. And to what extent was your company induced to make the arrangement with Dun and Bradstreet relying upon the statements in those letters?

2256 A. We accepted their services.

Mr. Stewart: I offer these Exhibits 110 and 111 in evidence (handing to Mr. MacIntyre).

Mr. MacIntyre: These two exhibits are objected to as being incompetent.

We had Mr. Walter Mitchell, who worked for Dun and Bradstreet, who handled this matter for these Respondents, on the stand. He testified about some tabulations he

had made up. The Respondents at that time were free to cross-examine him on the matters that are included in these letters. They are also free to call him as their witness, or to call the writer of these letters, who is Mr. H. L. Graper, and have him tell us about them.

There are statements in these letters that, if they are put into the evidence except in the manner that I have indicated as being proper, would be highly prejudicial. I think that they should not be received in the form offered here.

Trial Examiner Norwood: I think that the writer should be subject to cross-examination on these papers. He has made a good many statements here about the discontinuance of the Association, touching rather vital matters. The counsel may hold these until such time as he may have somebody on the stand.

Objection sustained.

2257 (Documents were thereupon marked for identification "Respondents' Exhibits 112, 113-A to 113-E, 114-A to 114-F, and 115-A to 115-C.")

By Mr. Stewart:

Q. Major Quinn, I show you Respondents' Exhibits 112, 113-A to E, inclusive, 114-A to F, inclusive, and 115-A to C, inclusive, which purport to be declarations of policy of the Rigid Steel Conduit Association with reference to technical work, ask you to look at them and tell us whether or not you are familiar with the documents sufficiently to say if they are correct (handling the documents to the witness).

Mr. Stewart: I might say these came out of the files of the Rigid Steel Conduit Association, which I have in Pittsburgh, and which Mr. Williams had access to, if you want to save time. They show on their face that they are file copies.

A. Exhibit 112 is a statement by the chairman of the Technical Committee as to what he recommends for the operation of the consulting engineer.

R-113-A to E, inclusive, and 114-A to F, inclusive, are a report of the consulting engineer. He made these reports at infrequent intervals, sometimes explaining what he had been engaged in and at other times explaining what he proposed to do during the coming months, and these were always presented to each member of the industry, and

2258 they studied them, and then at a subsequent meeting

they would be discussed around the table with Mr. Penn Denton.

By Mr. Stewart:

Q. Did you in due course of the affairs of the Association receive copies of those documents?

A. Of those three.

Q. Yes.

A. This report—this exhibit 115-A, B, and C I also received. It is a report of the meeting of the—no; it is a report of Mr. Penn Denton to the chairman of the Technical Committee with his recommendations of what should be done, and I received a copy as a member of the board of directors.

Mr. Stewart: I offer these documents in evidence (handing to Mr. MacIntyre).

Mr. MacIntyre: Off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. MacIntyre: My objection to these documents is to the effect that they relate to matters not in issue. They duplicate even in that direction material which Mr. Stewart has put into the record through this witness in the last two days; therefore, they are cumulative.

Trial Examiner Norwood: Well, I shall have to reserve the ruling until I can study them.

Mr. Stewart: I may say the basis for which they
2259 are offered is to show that the technical work of the Association was bona fide and not a mere screen for price-fixing activities.

Trial Examiner Norwood: Can't the counsel get some kind of stipulation with respect to that?

Mr. Stewart: You see, we are resting under a cloud that everything we did was mere camouflage.

Trial Examiner Norwood: Regardless of your differences there, you can stipulate as to some, or a great many, or just how many activities of the technical division and the Trade Extension Division that were proper and right—

Mr. Stewart: Well, we can give you a memorandum every year as to—I will show you.

Trial Examiner Norwood: —and you do not have to meet those things unless you are charged.

Mr. Stewart: Now, here—if Mr. MacIntyre wants to read I will give him something to read—here are the minutes of the Technical Committee and the bulletins which

show very plainly the amount of work done by that branch of the Association from 1933 until the Association dissolved in 1940.

Now, each one of these books contains an index which shows exactly what was done in each year in the way of bulletins and other activities of the technical committees.

We are always, of course, liable to the accusation, you see, that the technical committee was simply another
2260 name for a price-fixing group. Now, I am showing you what actually was done; that it was bona fide, and I shall argue later that that was the principal activity of the Association; that the so-called commercial side of it was merely incidental. Primarily what they were interested in was in promoting the sale of conduit, and they spent most of their money in that activity, and hence I have the right to contend that the alleged conspiracy is without basis of fact.

Now, if Mr. MacIntyre will stipulate with me that, instead of offering in evidence all these volumes, that I may take out, or rather, have copies made of the indices to these various books, with his right to examine the books for anything he wants, and to use them for anything he wants, why, I shall do that, instead of putting all this mass of documents into evidence.

Mr. MacIntyre: I think I can dispose of that with a stipulation right now.

Trial Examiner Norwood: All right.

Mr. MacIntyre: I stipulate that these Respondents have, during the time since they organized the Rigid Steel Conduit Association, indulged in, and in fact through that Association, some legal activities.

Mr. Stewart: Some what?

Mr. MacIntyre: Some legal activities.

(Laughter.)

2261 Mr. MacIntyre: Some activities that are lawful. That is all that great bulks of this evidence can show. Now, as to this Technical Committee, I have shown through some evidence I have put in as to its operations that it operated in some activities in an unlawful way. Consequently, as to some of the activities that were engaged in and that did not go to the general purpose and general design of Respondents, it is irrelevant and immaterial. We are only concerned about that evidence that goes to the general purpose and general design of the Respondents, that is, in the direction of unlawful price fixing.

Mr. Stewart: Well, now, what I want—

Mr. MacIntyre: And it is only the evidence that leads in that direction that I put in, and they are not meeting it at all. There are a great many religious and fraternal organizations that engage in metaphysics and fraternal and religious activities, but some of them have been indicted for indulging in unlawful activities at the same time.

Trial Examiner Norwood: Now, I would go a little further than counsel in permitting you to show the Commission, if it is a fact, that the activities of this scientific division here were mainly directed to legitimate purposes or entirely directed to—

Mr. Stewart: Entirely so. That is the point; not mainly.

2262 Trial Examiner Norwood: Yes, but I don't see that it is necessary to go in this roundabout way; and I think you can put somebody on the stand and within a mere few pages you can state that without—

Mr. Stewart: You see, one difficulty about that is this: That Mr. MacIntyre moves in a rather mysterious way. At one stage of the record we were accused of having conspired in restraint of trade by establishing these standards. Now, here is the whole story of the standards and the various activities of the technical side of the organization. Now, I don't know how to get it in except to show you the facts. Now, what I asked Mr. MacIntyre—and he hasn't answered it yet—is whether or not he will stipulate with me that instead of putting in evidence this mass of documents consisting of about 10 volumes of minutes of the Technical Committee of the Rigid Steel Conduit Association, beginning in 1933 and ending in 1940 when the Association was dissolved, he will permit me to use the index with the right on his part to check each volume to see that the matter set forth in the index correctly states the matter in the volume.

Trial Examiner Norwood: Let us see one of those.

Mr. MacIntyre: I object to the indexes as much as I do to the volumes because it is my contention that—

Mr. Stewart: Well, it is your contention we have no case; I know that.

2263 Mr. MacIntyre: —while this Technical Committee of the Rigid Steel Conduit Association might have at some times indulged in some lawful activities, that we have

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put in evidence here that it did indulge at other times in unlawful activities, and in support of the general combination and price fixing of the Respondents.

Trial Examiner Norwood: We have been over that. I think, though, that counsel can put this in in a less expensive way than our receiving all these books here to show hundreds of things that are not involved in this proceeding at all.

Mr. Stewart: I quite agree.

Trial Examiner Norwood: You want to show the mere fact that this is a bona fide scientific organization which directs its efforts to the extension of use of the product here, and not something that merely took action which might be in some circumstances used to bring about uniformity of prices. I think it is asking the Commission too much—asking too much of the Commission to ask them to go through all this material—

Mr. Stewart: I quite agree.

Trial Examiner Norwood: —just for that one little side character issue, you might say.

Mr. Gilpatric: That is the point. It is not a side issue.

2264 Mr. Stewart: Of course, it is very, very essential, it seems to us, to show—

Trial Examiner Norwood: That is just one of the side issues of the case.

Mr. Stewart: Let me ask Major Quinn.

By Mr. Stewart:

Q. Major Quinn, can you tell us in a very general way the nature of the activities of the Association from the standpoint of its technical work as compared with the so-called commercial side? Which was the one that was emphasized?

A. The technical side.

Q. And you have in front of you volumes of minutes of the Technical Committee, beginning in the year 1933 and ending in the year 1940, when the committee—when the Association dissolved. Do you know sufficient as to the contents of those documents to say as to whether or not they fairly represent the work of the Technical Committee, or are you not sufficiently familiar with the contents to testify as to that?

A. Well, I would have to look at these particular folders.

I can do that in just—I think if I looked at one it would give me the—

Q. All right. I will show you the volume entitled "Memoranda and Related Subjects, Technical Committee, Rigid Conduit Section, 1933," and ask you to glance through it and state whether or not that fairly repre-
2265 sents the work of the Conduit Section in that year.

Mr. MacIntyre: I object to further questioning along the line, because the line leads into irrelevant and immaterial matter.

Trial Examiner Norwood: Objection overruled.

A. I would say that it does.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

(Question read.)

Mr. Stewart: I should like to add to the question—

Trial Examiner Norwood: What was the answer?

(Answer read.)

Mr. Stewart: I just want to add to the question "consisting of 202 pages."

Mr. MacIntyre: Did the witness state what year that it involved?

Mr. Stewart: I beg your pardon?

Trial Examiner Norwood: What year does that involve?

Mr. Stewart: 1933. I think that is the way the question reads, doesn't it, sir?

The Reporter: Yes.

Trial Examiner Norwood: I shall sustain the objection to the proffer of Respondents' Exhibits, for identification, 112 to 115-C, inclusive, subject to the understanding
2266 we have here that he may show in a general way what the character of this committee was.

By Mr. Stewart:

Q. Now, Major Quinn—

A. Mr. Stewart, would you refer to your question there again as he read it at the end? I want to get the last sentence.

Q. All right. You may have it.

Mr. Stewart: Will you please repeat it?

(Question re-read by the Reporter.)

A. I understood you in giving me that question to say the Technical Committee of the Conduit, and that isn't in the—

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Q. —question?

A. He says "Rigid Conduit Section" and it is the Technical Committee of the Rigid Conduit Section.

Trial Examiner Norwood: Your answer, then, is with respect to the Technical Committee of the Rigid Conduit Section?

The Witness: That is correct. I thought when he read it he left out the words "Technical Committee."

By Mr. Stewart:

Q. Major Quinn, what proportion of your sales of conduit are on a consigned stock basis?

A. Approximately 80 percent—no; approximately 60 percent.

Q. Now, then, what change in your sales policy,
2267 if any, did the Blake form of consigned stock contract make in your company?

Mr. MacIntyre: I object to a statement by the witness as to what it makes. Mr. Stewart put in yesterday through this witness a copy of the consigned stock agreement antedating this period, and there is already in evidence prior to yesterday one postdating it. Rather than taking someone's interpretations as to what the differences are in the provisions, they speak for themselves.

Mr. Stewart: That isn't the question—

Trial Examiner Norwood: Objection overruled. He may tell us what changes he made in this policy pursuant to that—

Mr. Stewart: That is right; the sales policy, that is what I am talking about..

A. There wasn't any material change in our company's sales policy. It did very definitely establish the question that had been in our minds for years, and that is of the combination contractor-jobber; and the new consignment agreement did very definitely handle that feature which had been a very disturbing factor with our company for a good many years.

By Mr. Stewart:

Q. Well, from what angle?

A. The contractor-jobber is a man who maintains a jobbing establishment and also a contracting establish-
2268 ment. Using the name of one well-known firm, for example, McCarthy Brothers and Ford in Buffalo, or Double—I can't think of it; Iron City Electric in Pitts-

burgh was another example. Now, they buy as a jobber, and because of that ability to buy as a jobber they at all times have an advantage of five percent over the contractor who does not have a jobbing establishment which—which then causes our jobbers to request us to give them an additional allowance in the price so they in turn can sell their customers at the same price as the combination contractor-jobber buys from the mill, and the new contract, or the revised contract, or whatever you care to call it, that Mr. Blake suggested to us and which our counsel passed on and approved it—we compelled the contractor-jobber to separate his sales, and those sales which he made as a jobber he was permitted to earn a compensation for his services as a jobber, but that portion which he used as a contractor he did not get that compensation, and he had to pay for it the same as if he in turn had bought that material from any other jobber in the town.

Q. Major Quinn, directing your attention to the subject of the discounts which are allowed, what is the situation—what has been your experience as to what happens where your customer takes his discount after the expiration of the discount period?

A. You mean what is our company's policy?

2269 Q. Yes; what is yours?

A. We have always allowed a few days beyond the period. But a man who does not take five percent cash discount in—among our customers we drop him from the list of customers. The man that can't afford to pay his bills on the 15th of the month prox. and earn a five percent cash discount we consider too dangerous a credit risk for us to continue to sell.

Q. So that the net result of your experience has been that the customer takes his discount in what amount? In what amount of his invoice?

A. On the total amount of the invoice.

Q. Now, Major Quinn, in the minutes of January 27, 1937, there is a statement with regard to taking over by Organization Service Corporation of the investigation of specific building contracts. Do you recall the reason for that action?

A. The reason that they took it over?

Q. Yes.

A. Or the reason for checking it?

Q. No. The reason that they took it over?

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A. We had attempted—when I say "we" I am still referring to our company—to have these contracts checked, with little or no success because it was almost impossible to find adequate—or capable men to do the investigating in view of the fact that our number of contracts were few.

The Organization Service agreed to establish a check-
2270 ing bureau and which would—which would investigate —which did nothing in connection with price but first established the fact that there was such a building operation, and, second, whether or not such and such a contractor had the—the contract and, third, who he expected to purchase his material through—I mean the distributor—and, fourth, to attempt to go to the architects and the engineers and establish whether the amount that he proposed to buy was the correct amount required for the job, and if and when they discovered that there was more than one contractor on the same job they—they reported back to those interested companies only.

In other words, if we were not one of the companies in the contract we knew nothing about it. They reported back to those companies that there was more than one contract filed on the job, and then it was up to the individual manufacturer to investigate from there and decide whether or not he had a valid contract.

Q. Now, in those situations in which you had that experience, that is to say, your company, let us say, was one of three companies, who got the contract? Which company?

A. You mean in cases where we—

Q. I assume now that you discussed that with each other.

A. Well, I told you yesterday of a small job that three companies with which I am closely affiliated all had the same contract each for a different amount, all with
2271 the same contractor, but each with a different jobber, and in that case we went to the contractor and said, "Now, what is this? Which contract is genuine, and why the signing of three contracts?" And he so happened to give the contract to the Enameled Metals; that is to say, that ours was a bona fide contract.

Q. What I want to get at is this: How was it decided? Let us eliminate your affiliated companies and take the situation which is three competing companies, and it turned out that there was an overspecification on a building job. Was the matter of who got the contract determined in the way you just described as to who had the bona fide contract?

Mr. MacIntyre: In that particular instance I object unless it is specified.

Mr. Stewart: Well, maybe we can get it from the witness. I just want to know the practice.

A. I have already testified, Mr. Stewart, that where there is more than one contract on the same job, or if the contract called for more than it should have, it was referred back to the manufacturer and it rested entirely with him whether he canceled the contract, reduced it, or what became of it. That was purely for his own decision what he was going to do.

By Mr. Stewart:

Q. Possibly I used the wrong term when I asked you whether or not the Organization Service Corporation
2272 took over investigation of the specific building contracts. Did they take it over or did they employ somebody to do the work?

A. Well, what would be the differences, whether they took it over or employed somebody to do the work?

Q. You don't make any distinction.

A. I don't make any distinction.

Q. Major Quinn, in one of these minutes which Mr. MacIntyre put in evidence, as I recall it, there was some reference to instructions to Mr. Booth, the secretary of the Association, to gather figures of outstanding tonnage. What was the reason for that?

A. There had grown up in the industry a habit of padding contracts on the part of the purchasers, and, as I have stated a few minutes ago, there would be several contracts issued for one job, and each among—each company itself considered that they had a valid contract. Naturally, your business is always affected by the backlog that exists, and we wanted to determine how much backlog of tonnage there was on contracts in effect—not the prices, but just the amount of tonnage that was actually involved, and how much was genuine.

Q. Well, now, you said—

2274 By Mr. Stewart:

Q. Major Quinn, you said that it affects your business. That is intelligible to you, but it may not be intelligible on the record. So will you explain why it is the backlog of outstanding tonnage does affect your business?

A. Well, there is always a certain amount of morale in

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every sales organization. If the backlog amounts to several months' normal production, the morale is at a high rate; but if the backlog is less than a month, the sales organizations get frightened and they commence to listen to the wiles of the unscrupulous buyer and possibly accept business at a reduced price, which they would not accept if they knew there was sufficient volume of backlog to keep all of the manufacturers reasonably busy.

Trial Examiner Norwood: Doesn't almost every buyer tell the salesman he can buy for less than he can sell him?

The Witness: Well, if there is one that doesn't I haven't met him. (Laughter.)

2275 By Mr. Stewart:

Q. Major Quinn, I show you Commission's Exhibits 449, 450, and 452, which are interoffice communications of Triangle Conduit & Cable Company, ask you to look at them and familiarize yourself with the subject matter referred to therein (handing a volume to the witness).

The Witness: (Addressing the Reporter.) What are the numbers?

Trial Examiner Norwood: Read the question.

The Reporter: 449, 450, and 452.

Mr. MacIntyre: I object to the witness reading those letters on the stand. It is just the same as propounding to him leading questions. They are not letters that he wrote or that he received.

Trial Examiner Norwood: What are they?

Mr. Stewart: They are letters between Triangle Conduit & Cable Company and Austin Company in which the gentlemen undertake to say what Mr. Quinn and the other manufacturers did. I am just asking him to look at them so as to familiarize himself with the subject.

Trial Examiner Norwood: I think the counsel is right. I think you may just make your own reference on the record to these particular letters and then ask this wit-

2276 ness as to the fact without telling him what it is. I mean by that that you may—after you bring out the factual matter from this witness, then you may state for the record the numbers of these exhibits to which this is a reply.

Mr. Stewart: Well, I don't like to differ with you on that. If showing him the correspondence suggested the answer, I would quite agree that it was a leading question; but showing him the correspondence is not going to sug-

gest the answer, because I expect a totally different answer from that indicated in the correspondence.

Trial Examiner Norwood: Well, he has already examined them.

Mr. MacIntyre: He has not completed his examination of them, if Your Honor please, and I object—

Trial Examiner Norwood: I think the proper way to do it is to ask him the facts.

Mr. Stewart: All right with me.

Mr. MacIntyre: It is an improper method of examination.

Trial Examiner Norwood: And cite these exhibits thereafter in connection with this evidence. If he does not understand what you are talking about, why, you may make it clearer.

By Mr. Stewart:

Q. Mr. Quinn, in a letter dated June 9, 1938, which
2277 is Commission's Exhibit 449—

Trial Examiner Norwood: I think that is what we decided we would not do.

Mr. MacIntyre: That is exactly what I am objecting to.

Trial Examiner Norwood: Ask the witness for the facts relating to that subject.

Mr. MacIntyre: Let us find out from the witness whether he did something on some occasion which somebody else might have said he did.

Mr. Stewart: Well, I have always understood, sir—I don't like to press that too much—I have always understood that if you want to contradict testimony you have a perfect right to read that testimony to a witness and ask him whether or not that testimony is correct. Now, that is what I am doing. Mr. MacIntyre has put this in as evidence of the facts. Now, I am just calling this witness' attention to that testimony and asking him whether that is so. That is all I am doing.

Trial Examiner Norwood: I don't think that you can tell this witness. It is in the nature of a leading question.

Mr. MacIntyre: It is no more, if Your Honor please, than showing this witness testimony in the record by some other witness and saying, "Now, did that witness testify to the truth?"

2278 Mr. Stewart: Well, I have always understood—

Mr. MacIntyre: Let us find out what this witness knows.

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Trial Examiner Norwood: We will try to go to the facts and make our investigation a little broader than that.

Mr. Stewart: The trouble with Mr. MacIntyre is he wants to put words in my mouth. I haven't any such thought in mind. I want to ask the witness whether or not the facts stated in those letters are correct. I am talking about facts not whether—

Trial Examiner Norwood: Well, you are asking him for a conclusion there. You ask him for facts. Bring out facts which are inconsistent with the statements there. If it mentions this witness, you may specify the occasion, or the time, or whatever it is.

Recess until 1:45.

(Whereupon, at 12:15 o'clock p. m., a recess was taken until 1:45 o'clock p. m. of the same day.)

2279 Afternoon Session.

1:45 P. M.

Trial Examiner Norwood: Come to order.

In regard to the proffers made yesterday, Respondents' Exhibits 69 to 102, inclusive, Exhibit 72-A to E has been received by consent.

Exhibits 69 to 71, inclusive, and Exhibits 73 to 102, inclusive, are received in evidence for the purpose of illustrating this witness' method in dealing with his agents and with certain price situations. They consist of written statements made by him and letters and statements by others. His statements are received unconditionally, as he is on the stand and can be cross-examined thereon. The writings and statements of others are received merely to explain the witness' writings and are not in evidence to show the truth of the statements they contain. This applies to all of these documents unless and until the writers are produced and rendered subject to cross-examination.

Now, with respect to Respondents' Exhibit 70—

Mr. Stewart: There was no objection to that.

Trial Examiner Norwood: I will state, however, that 70-F, consisting of a tabulation, has been withdrawn and will not be received in evidence. In other words, the objection is sustained with respect to that.

Exhibit 71-B is not received in evidence. The objection

is sustained with respect to it, and it is not received
2280 in evidence.

Now, with respect to Respondents' Exhibit 70-A to E, I will state that I changed the lettering on those, and I did not realize until after I had done it that there might be some confusion in the matter of the witness' explanation there. He referred to the tabulation, I remember, possibly under the old letter. I simply arranged them in chronological order.

Mr. Stewart: Yes.

Trial Examiner Norwood: But the counsel may straighten that out by further questions if he wishes.

RESPONDENTS' EXHIBITS NOS. 69, 70-A to 70-E, 71-A, 73-A and 73-B, 74-A and 74-B, 75, 76-A and 76-B, 77, 78, 79, 80, 82, 83, 84-A and 84-B, 85-A to 85-C, 86, 87, 88, 89, 90, 91-A and 91-B, 92, 93, 94, 95, 96, 97-A to 97-C, 98-A and 98-B, 99-A to 99-C, 100-A and 100-B, 101, and 102 were offered and received in evidence.

Trial Examiner Norwood: Now, under the same conditions Respondents' proffer of Exhibits, for identification, 103, 104, 105, and 106 are received in evidence, and the objections are overruled.

2281 RESPONDENTS' EXHIBITS NOS. 103, 104, 105, and 106 were offered and received in evidence.

Mr. MacIntyre: The same conditions apply to those as to these that were received from 69 to 102?

Trial Examiner Norwood: Yes. That is just what I have said.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: The objection is sustained as to Respondents' proffer of Exhibits, for identification, 60, 61, and 62-A and B.

Go ahead.

L. R. QUINN thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Stewart.

Q. Major Quinn, do you recall at what stage you made a change in the construction contracts provision which formerly provided for your accepting it for the life of the job? Do you remember when you made that change?

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A. Along in the fall of 1939.

Q. And what was the reason for that?

A. Well, it was becoming clearer every day that this national emergency was going to require our full operation of the plant, and we had always, as a company, been
2282 opposed to these extended building contracts, and in order to clear the decks so that we did not have a lot of useless contracts that could be drawn on at will, and to conserve all the material we could for the necessary current orders, we put that change into effect.

Trial Examiner Norwood: Did anybody else follow that action?

The Witness: I really don't know. I think possibly they did, but I don't know.

Trial Examiner Norwood: Do you know anyone who did that same thing before you commenced it?

The Witness: I do not.

By Mr. Stewart:

Q. Well, on whose initiative was this action taken?

A. To the best of my knowledge and belief, our own.

Q. What was the change in your policy?

A. Well, formerly the contract had called for six months with extensions if desired beyond the six months. The new contract limited to 90 days with a limited extension if we cared to grant it.

Q. Now, I call your attention to Respondents' Exhibit 103, which is your letter to Mr. H. S. Blake of June 4, 1938, and I ask you whether or not you wrote the original of that letter to Mr. Blake (handing a document to the witness).

A. I did.

2283 Q. And I ask you whether or not the enclosures, as shown on the bottom of your letter, are the enclosures—or are the documents, Exhibits 104, 105, and 106?

A. They are.

Q. Major Quinn, there appears in the record a letter from Mr. A. Friend to M. B. Austin Company, under date of June 9, 1938, which refers to—

Mr. MacIntyre: Now, I object to informing and advising the witness in this way of what is in the record now. It is just a violation of everything that is behind the rule against leading questions.

Mr. Stewart: Well, now, since that—

Trial Examiner Norwood: Well, now, is this a letter—

Mr. Stewart: I want you to understand me, Mr. Examiner, because it may be that you are laboring under a misapprehension as to what I propose.

What I have in mind is this: At least in the time I have practiced law my conception of the way to contradict the witness is to read the witness' testimony to the man to whom—you expect to contradict it, and my experience has been that the court will always stop you if you don't do it that way.

Trial Examiner Norwood: Tell him who said it and what was said.

Mr. Stewart: Certainly. That is the way I want
2284 to do.

Mr. MacIntyre: I thoroughly agree with Mr. Stewart.

Trial Examiner Norwood: I don't think that is the way to do it.

Mr. Stewart: My experience has been to quote the paper; certainly.

Trial Examiner Norwood: That is, if you are going to contradict a statement by a witness on the stand you have to state time and circumstances and all that, but here you want to give some statements here to controvert other statements made in writing.

Mr. Stewart: That is right.

Mr. MacIntyre: Made by other witnesses.

Trial Examiner Norwood: It is not necessary to inform this witness what you want to contradict there. Ask him for the facts. You must specify sufficiently to bring that out. I don't want to hamper you in any way.

Mr. Stewart: No, I know you don't.

Trial Examiner Norwood: But I don't think it is proper to read the paper which you wish your witness and your client to contradict and then ask him if it is true or not true.

Mr. Stewart: Of course, I don't expect to ask him whether it is true or not true. I expect to ask him what is the fact with regard to that matter.

2285 Trial Examiner Norwood: You can bring that out, unless it is a paper that he has written or received or has something to do with.

Mr. Stewart: But, you see, that theory leaves you open

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with the argument that while you have contradicted generally you haven't contradicted a specific situation.

Trial Examiner Norwood: You can ask him if he wrote anything like that. You can ask him as to the specific instance.

Mr. Gilpatric: If I may interpose a word or two—

Trial Examiner Norwood: Certainly.

Mr. Gilpatric: You understand that what this is about is certain letters between other Respondents than the company Mr. Quinn represents. Mr. MacIntyre is attempting to use those letters as admissions against all the other Respondents because of the statements in those letters. Now, how can we contradict—how can we meet those issues unless these questions are put to a witness and he knows what he is supposed to contradict. If Mr. MacIntyre is correct, we have no way of meeting that kind of evidence, correspondence between other Respondents which this witness is not in any way familiar with, presumably, never saw these letters.

Mr. MacIntyre: If Your Honor please—

Trial Examiner Norwood: Wait a minute.

Have you finished?

2286 Mr. Gilpatric: Go ahead.

Trial Examiner Norwood: Are you finished, Mr.—

Mr. Gilpatric: Yes.

Mr. MacIntyre: If the contention of Respondents' counsel is correct, then, as to any admission made by any of these Respondents on the stand as witnesses for me or even for them that they don't like they can take it up to him on the record and say "Was 'X' correct in his statement? Did he give good testimony and true testimony here?" It is an admission against an organization.

Mr. Bozeman: If Your Honor please, I would like to suggest that Mr. Stewart be permitted to ask this question, state the question fully, and not be interrupted, and I think you will see the point to the question—

Trial Examiner Norwood: I will ask—

Mr. Bozeman: —if the entire question is put to the witness.

Trial Examiner Norwood: Thank you. I will ask him to do it.

Mr. Bozeman: Mr. MacIntyre is interrupting and misstating what the question really is.

Trial Examiner Norwood: I will ask him to complete his question.

Mr. MacIntyre: May we ask that the witness and other Respondents step from the room until he completes
2287 the question so that you may know what it is?

Mr. Stewart: All right. All right.

Trial Examiner Norwood: No. I will let him—

Mr. MacIntyre: Why object to the question after the witness hears it put to him and then another one following upon its heels advises him that it is the previous question to which you have sustained my objection? I don't see any reason to that.

Trial Examiner Norwood: I shall let him complete the question.

Go ahead. Complete the question.

By Mr. Stewart:

Q. Major Quinn—don't answer this, of course—

Trial Examiner Norwood: Yes.

Q. —there is in evidence a letter from A. Friend to M. B. Austin Company, dated June 9, 1938—I will withdraw that, sir.

Major Quinn, there is in evidence a letter from A. H. Friend, of M. B. Austin Company, to Mr. J. A. Hawks, Triangle Conduit & Cable Company, Elmhurst, Long Island, under date of June 9, 1938, which refers to adherence to card 76 and states that the writer—"The combined action of the manufacturers will straighten the situation out."

Now, was there any meeting held, attended by you, at which any such action was taken, or do you know of any action of the conduit manufacturers in which they
2288 agreed that they would concertedly undertake to straighten out the situation with regard to card 76?

Mr. MacIntyre: I object to the question for the reasons stated in the objection to the other questions previously asked immediately preceding this one.

Trial Examiner Norwood: Objection overruled. He is asking him there to deny a paper.

Go ahead.

A. I never attended a meeting where such a subject was discussed, or I never was party to any agreement to control card 76.

By Mr. Stewart:

Q. Now, there is in evidence a letter from Mr. J. A. Hawks to Mr. A. H. Friend, of M. B. Austin Company, under the date of June 10, 1938, in which Mr. Hawks states

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that "Whether or not the conduit industry will permit group deviation on their own initiative such as the case in this instance is something which I will let you know something more about next week after I have opportunity to discuss the matter with several of our competitors."

Now, did you have any discussion with Mr. Hawks on the subject of deviation by the Chicago Wholesalers Association from card 76?

Mr. MacIntyre: I object to the question as being improper in form and as too leading in character.

2289 Trial Examiner Norwood: Objection overruled.

Now, I think that permitting that question is within my discretion, and if I see that improper suggestions are intended to be conveyed by such question I would not hesitate to exclude it,—

Mr. Stewart: I wouldn't want you to.

Trial Examiner Norwood: —if after the paper is read I would be satisfied that that was not the case.

Objection overruled.

The Witness: Will you read the question, please?

Trial Examiner Norwood: That applies to my remark in regard to the previous question, too.

Mr. Stewart: Yes, sir.

(Question read.)

A. I did not, or with anybody else.

By Mr. Stewart:

Q. Now, I should like to ask you whether or not Mr. M. B. Austin, whom the record shows is now dead, was a member of the Rigid Steel Conduit Association?

A. He was not.

Q. Did he ever attend a meeting, to your knowledge?

A. He couldn't attend a meeting because we only permitted members to be there except in rare cases where we invited some guest. He never attended a meeting.

Q. I show you the minutes of June 14, 1938, which 2290 is the minute which follows—which are the minutes of the meeting which follow the letter of June 10, 1938, to which I just referred, and ask you to look at it—Commission's Exhibit 658—ask you to look at the minutes of the meeting and first state whether or not it was the practice to record the names of those present at the meeting.

A. It was, of course. The secretary always called the roll.

Q. Now, was Mr. Friend present at that meeting?
A. No, sir.
Q. Was Mr. Hawks present?
A. He was.
Q. Did you have any discussion with him on the subject I have just referred to at that meeting?
A. I have already testified I never had any discussion with him or anybody else on the subject.
Q. Now, Major Quinn, under the date of June 11, 1938, Mr. M. B. Austin wrote to Mr. R. J. Thorne, of Detroit, Mich., and I am quoting: "That's the kind of information we want because the manufacturers at their last meeting decided that the jobbers would have to maintain their agency agreements, and every manufacturer promised to contact his distributor agent, tell them they must live up to the terms of the contract, so just hearsay information won't do us any good. We cannot correct the situation with that kind of information."

Now, state whether or not there was any such agree-
2291 ment at the meeting of manufacturers, which would be that of May 12, 1938?

Mr. MacIntyre: I object to the question as improper in form and ask that it not be permitted to be answered by this witness at this time.
Trial Examiner Norwood: Objection overruled.
A. There was no—there was no agreement or no discussion that I recall.
Mr. MacIntyre: What was the number of that exhibit?
Mr. Stewart: Sir? The letter? 452—5. I am sorry. 455.

By Mr. Stewart:

Q. Now, in a letter of June 11, 1938, from Mr. A. H. Friend, of M. B. Austin Company, to Mr. H. M. Pomeroy, Los Angeles, Calif., Commission's Exhibit No. 459, Mr. Friend states: "I might say in connection with this that there have been several conduit meetings held this week and it looks as though Rigid Conduit may take the advance that has been so long anticipated and is so very necessary."
Now,—
A. What was the date of that?
Q. June 11, 1938.
Will you tell us what happened to the price of conduit after June 11, 1938?

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2292 A. There was a drop when first card 77 was issued on July 8—

Mr. MacIntyre: May I ask the witness to specify in the record as to what document he is testifying from.

Mr. Stewart: I will stipulate that he is testifying from the price card which is a duplicate of the price card in 2293 evidence of the Enameled Metals Company.

Mr. MacIntyre: And what is the number of the card?

Mr. Stewart: Seventy-seven.

The Witness: Seventy-seven.

Mr. MacIntyre: And the date of it?

The Witness: July 8, 1938.

A. (Continuing.) That was a considerable reduction, which was followed on July 28th by card 78, which completed the reduction of approximately $20 a ton.

By Mr. Stewart:

Q. Now, this letter states, as I have read it to you in my original question, that there were several Conduit meetings held that week. Did you attend several Conduit meetings that week?

A. I believe there was one there. You just showed me the one of June. I believe there was one conduit meeting, but there were not several.

Q. Let me refresh your recollection. The letter is dated June 11, 1938. I showed you a minute of June 14, 1938.

A. Oh, I had not attended any meeting—you have the minutes there of the meetings. They are all in evidence. I would assume that the meeting before that was some time in April or May, and I attended no meetings immediately preceding June 11.

Q. Well, I thought possibly Mr. Friend, who was 2294 at Chicago, might have attended some conduit meetings that you might not have attended. Do you think that is possible?

A. I would not think so.

Q. Now Major Quinn, under date of May 5, 1939, Mr. McAuliffe, president of Triangle Conduit & Cable Company, wrote to Mr. M. B. Austin, of Chicago, as follows—and this refers to an upset on the Pacific Coast on conduit. I am quoting now:

"The industry, recognizing this, really sat down and talked things out in a broad-minded way yesterday, with

the result that our Coast jobbers are now definitely on a basis of card 80, and any and all public bids and any and all future delivery contracts are strictly on a basis of card 80."

Do you have any recollections of that subject having been discussed in the meeting of May 4, 1939, which is the meeting immediately preceding the date of Mr. McAuliffe's letter?

I show you the minutes.

2295 By Mr. Stewart:

Q. Did you atend that meeting, Major?

A. This is marked "Part of the time." I apparently only spent part of the day there.

Q. All right.

During the time you were there did you hear any discussion of the subject mentioned in that letter?

A. I did not.

Now, you will notice he referred to the industry, 2296 not to the Association.

Q. Well, what is the distinction?

A. One is the Association and the industry might be any group of manufacturers that got together to discuss industry doings.

Q. In any event, you were not a party to it?

A. I was not a party to it.

2297 By Mr. Stewart:

Q. Will you state whether or not it was stated while you were present at the meeting that you were all going to maintain your card prices and that you were not going to be influenced by all the propaganda and statements of buyers, as I stated in the question?

Mr. MacIntyre: I object.

Trial Examiner Norwood: On what ground?

Mr. MacIntyre: The statement contained in the question misstates the record and the circumstances.

Mr. Stewart: Well, that is simple.

Mr. MacIntyre: I object to the Respondents' Exhibit 49 and Commission's Exhibit 474 being shown to the witness, in attempting to reconcile the statements that have been made which are referred to in the question.

Trial Examiner Norwood: Well, what is the statement or assumpsion in the question that is not based on the record?

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2298 Mr. MacIntyre: The assumption in the question is that this discussion which took place among these Respondents as to the control of a price situation, and which is discussed at length and outlined at length in one of the Commission's exhibits, was a discussion which took place at an Association meeting held on May 4, 1939, and as disclosed by Respondents' Exhibit 49. Exhibit 474 does not say that it took place at that meeting at all. The question assumes that it did. It is a matter of confusing the witness through that lack of conciliation of the circumstances and having an answer that confuses the record.

Trial Examiner Norwood: I will sustain the objection to the question in its present form. It is very long and confusing and very difficult.

Mr. Stewart: All right.

Trial Examiner Norwood: Go ahead.

By Mr. Stewart:

Q. Mr. Quinn, the opening portion of the paragraph which I read to you is:

"Now, the industry has had a good meeting."

Did you attend any meeting at any time on or about May 8, 1939, or prior thereto, at which it was stated by all of the industry that they are going to maintain their card prices, that they are not going to be influenced by all the propaganda and statements of buyers regard-
2299 ing specials, as everybody is better off with a stabilized market?

Mr. MacIntyre: I object to that part of the question that antecedes the portion "Did you attend" such and such "meeting." I think it is improper.

Trial Examiner Norwood: Read the question.

(Question read.)

Objection overruled.

Answer the question.

A. I did not attend any meeting at which such a subject was discussed. I did attend a part of the time of a meeting that you just showed me the minutes of, and that was a meeting of the Association, not the industry. That was a meeting of the Association, not the industry.

By Mr. Stewart:

Q. Well, what is the differentiation between a meeting of the Association and a meeting of the industry?

A. The "Association" meetings are of members of the Association that pay dues. There were times when all the manufacturers were not members of the Association.

Q. Oh, I see.

A. And when the Underwriters Laboratories dealt with us they always dealt with us as the Rigid Steel Conduit Industry, and they appointed a committee, and we did occasionally have industry meetings.

Q. I see.

Now, then, what I am asking you is, with that dis-
2300 tinction, did you attend any such industry meeting?

A. I did not.

Q. In Commission's Exhibit No. 541, which is a letter on the stationery of Garland Manufacturing Company, addressed to Mr. Leo P. O'Brien, appears the following statement:

"We had our industry meeting yesterday in Pittsburgh. A few of the manufacturers made the statement that they had no difficulty whatever in obtaining card 76 in the metropolitan district. The manufacturers are doing their very best to stick to card 76 in all new business, and they believe it can be done."

I would like to ask you as to what your experience was in the New York metropolitan district in October, 1937, with reference to adherence to card 76.

Mr. MacIntyre: I object to the form of the question as being improper, and I ask that Mr. Stewart specify what exhibit he is referring to.

Mr. Stewart: 541. Your No. 541.

Trial Examiner Norwood: Objection overruled.

Go ahead.

The Witness: Read the question again, please.

(Question read.)

A. There was no time that card 76 was in effect that it was universally observed, and especially so in the New
York district. We sold orders below card 76 during
2301 the entire life of the card.

By Mr. Stewart:

Q. Mr. Quinn, in Commission's Exhibit 558, which is a letter from Mr. Leo P. O'Brien—the second page missing—to Mr. Robert M. Garland under date of June 22, 1938—

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First, let me ask you, do you know who Leo P. O'Brien is?

A. Only by name. I do not know him individually.

Q. Yes, I know, but—

A. He is a manufacturer's agent in New York.

Q. Mr. O'Brien states:

"I attended another meeting of the Label Conduit Manufacturers today at the New York Athletic Club. In attendance were Robert Milford of Steelduct, Milton Smith of Enameled Metals, J. A. Hawks of Triangle, Newt Walker of Walker Brothers, and J. Carroll of National Enamel."

Now, in the course of his letter Mr. O'Brien states this:

"Several projects were discussed as to prices and agreements that had been made, but nothing was pinned unto any of those present, which was in accordance with our agreement to maintain card 76 prices on any new projects which might come out after our first meeting."

Now, I should like to ask you as to whether or not Mr. Smith, who was apparently your representative, Mr.
2302 Milton Smith, ever reported to you that any such arrangement had taken place?

2303 A. He never did.

By Mr. Stewart:

Q. What was Mr. Smith's status with your company?

A. He was a manufacturer's agent who worked on a commission. He had no other connection with us other than a salesman, and he also represented other companies besides ourself.

Q. Oh.

Trial Examiner Norwood: Was he your agent to whom you consigned goods?

The Witness: Oh, no. No. He was our manufacturer's agent.

By Mr. Stewart:

Q. What, if any, authority would he have to make you a party to any such arrangement?

A. He would not have any authority unless he took it up with me first.

Q. And did he take it up with you?

A. Not to the best of my memory.

2304 By Mr. Stewart:

Q. Major Quinn, will you state what the method was by which the Organization Service Corporation handled the investigation of specific building job contracts?

Mr. MacIntyre: I object to that as a matter of attempting to duplicate the record. That is what it will result in if he answers the question.

Mr. Stewart: I will be perfectly frank about it, the only reason I asked the question is I thought Mr. Quinn gave sort of an ambiguous answer this morning, and he said he didn't intend to do that and he wanted to make it plain that he had not.

Trial Examiner Norwood: Counsel may ask the question. Objection overruled.

A. The Organization Service attempted to and did obtain the services of some investigators, and their relations with the individual manufacturers were absolutely as individuals and not as the Association. Anybody that sent a contract to be investigated paid for that service individually. It didn't come out of the funds of the Association.

By Mr. Stewart:

Q. And to whom did the information go as a result of the investigation?

2305 A. Only to the man that submitted the contract. It went to nobody else.

Q. Major Quinn, I show you a letter which is in evidence as Commission's Exhibit 475—strike that, please. In a letter which is in evidence as Commission's Exhibit 475, Mr. Kim states, with reference to the investigation on rigid steel conduit contracts, that this investigation be made by a private concern not interested in the conduit business, and there will be a penalty assessed on each contract which is found not to be in order.

Now, what was the practice of your company with reference to assessing any penalty on each contract which was investigated, as stated by Mr. Kim?

Mr. MacIntyre: I object to the question as leading and otherwise improper in form.

Trial Examiner Norwood: Overruled.

A. We—we never thought of nor attempted to inflict a penalty for improper contracts.

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By Mr. Stewart:

Q. I show you one letter, which is Commission's Exhibit 531, to M. W. Bedient, June 8, 1938, call your attention particularly to the first paragraph on page 2—first two paragraphs on page 2 of that letter, ask you to explain the situation which prompted your writing to Mr. Bedient, as stated in those two paragraphs?

2306 A. The L. A. Woolley Company, of whom Mr. Bedient is vice-president, were located in—are located in Buffalo, and as—and Buffalo was one of those points that there was always conflict about the combination contractor-jobber. There were two or three companies in Buffalo that came under that class. Mr. Bedient was at Hot Springs at the May meeting, and he opportuned me to give him a special price which would allow him to sell to a contractor at the jobber's cost, and I told him very frankly that this could not be done. After he got back to Buffalo he took it up with our agent, and our agent called me on the telephone and asked me if I wouldn't write Mr. Bedient a good strong letter that would more or less settle this thing once and for all. Now, when you read your own letter three years later you sometimes find that you said things that weren't exactly according to the conditions. I don't recall that the Conduit Committee of N. E. W. A. as either a committee or the N. E. W. A. as an organization, made any approach, but individual jobbers who were customers of ours approached me at Hot Springs; and a buyer is always the same. He doesn't try to get a higher price from you; he is always trying to get a lower. But at this time—and this was during the heat of the Robinson-Patman hearings and their consideration and things like that—our customers came to us—as a rule the larger ones—and asked us if we wouldn't definitely enforce our price card. They

2307 didn't ask me what the price card should be, but they did ask me to definitely enforce the price card, and those two paragraphs were typical salesmen's paragraphs to try to sell the customer the idea that this was very important, that it had to be done.

Q. Now, did you ever punish any agent by taking his contract away from him, as indicated in that letter? I think you said something about punishing—cutting off—is that the language, Mr. Examiner? Something about cutting off an agent or something of that sort.

Trial Examiner Norwood: I will give it to you in just a minute.

Yes. Cut off any agent who violated his agency agreement.

Mr. Stewart: Yes.

A. Well, we always had that privilege under our agency agreement, but we never attempted to enforce it and never did enforce it in any case.

By Mr. Stewart:

Q. Now, Major Quinn, will you give us the distinction between a manufacturer's agent and a distributor agent in your business?

A. The manufacturer's agent is our salesman and he works for a commission. He usually represents a number of other concerns besides ourself. In recent years none of them except the Pacific Coast and Chicago have
2308 had any warehouses. They have nothing to sell other than our product shipped from the mill, and they have no control over the policies of the company and we have from experience—it has shown that we have little or no control over them other than we can sever the selling arrangement with them. The distributor agent is the jobber, and he is called a distributor agent under the consignment contract so that we can enforce the resale of our material, and he actually sells the goods, he collects for them and remits to us, and his whole remuneration from us is the compensation he receives under the price cards.

Q. Now, Major Quinn, it has been called to my attention I did not ask you as to whether or not there was any understanding or agreement between the Conduit Committee of N. E. W. A. and you as one of the manufacturers on the subjects mentioned in your letter, 531?

A. There was no agreement, no.

Q. Was there any understanding?

A. No understanding.

Q. Now, what has been the fact with reference to whether or not from time to time the Conduit Committee of N. E. W. A. has made requests of the manufacturers? What has been the fact? Has that been done from time to time?

A. At every meeting of the—of the Jobbers Association, both spring and fall, they usually had a joint meeting

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with their manufacturers, not only conduit but all
2309 their products. And the problems arising during the preceding six months that had a bearing on the business was discussed. There was never any attempt to effect prices. There never was any understandings or agreements with the jobbers concerning prices. As a matter of fact, there was never any agreements of any nature that came out of these meetings, because my interpretation of those meetings was merely an explanatory get-together so that the Conduit Committee themselves could report to the entire Association at their closed meeting the next day what was the conditions on, in our case, conduit. They weren't empowered to make any deals with us; they weren't empowered to have any understandings. It was merely a discussion of customer and supplier over the problems that were always before a customer and a supplier.

Mr. McIntyre: I move that the portion of the witness' answer that attempts to state with what cloaks representatives of the National Electrical Wholesalers Association were not empowered to do certain things be stricken.

Trial Examiner Norwood: Read the—

Mr. Stewart: What kind of cloaks?

Mr. MacIntyre: He says that these people were not empowered to do thus and so,—

Mr. Stewart: I was just trying to—

Mr. MacIntyre: —all these things he outlined.

Trial Examiner Norwood: You mean when he
2310 was speaking for the wholesaler?

Mr. MacIntyre: I want to know whether or not, and if it is not shown whether or not he was speaking for all of them, and he knows for whom he speaks, that it be stricken.

Trial Examiner Norwood: Well, I will let you cross-examine on that when the proper time comes, and if it appears that it should be stricken I will strike it then. Temporarily, however, we will deny the motion.

Mr. Austin: If Your Honor please, Mr. Quinn, specifically stated that it was his understanding. Now, this is a Respondent who has a right to testify as to what he understood the people he talked to at these meetings could do. That is all it goes to. Certainly further evidence can be put in. I see no reason why that is incompetent.

By Mr. Stewart:

Q. Now, Mr. Quinn, is freight a substantial factor in the cost of rigid conduit delivered at a point of use or resale which is at all remote from the place of production?

A. It is very material.

Q. What has been your observation and experience in your business as to whether a lowering of the price of rigid conduit has been followed by any material increase in the total sales of conduit?

A. Ah—

Mr. Stewart: Go ahead. Mr. MacIntyre is just
2311 a little nervous; that is all.

A. It has been our company's experience that you cannot increase the sale of conduit by either reducing or advancing the price. There is only so much that can be used, and there is only certain places it can be used.
2312 Go ahead.

Before you leave the subject I wanted to ask you for your estimate of the proportion of freight cost to selling price on average shipments. Can you give us any idea?

The Witness: Oh, yes, I can give you—in each case it is very roughly and simply—I suppose—do you want this as a part of the record?

Trial Examiner Norwood: Yes.

The Witness: Considering that conduit is approximately a hundred dollars a ton—

Trial Examiner Norwood: Would that be 25 percent of its selling price?

The Witness: Well, there would be very few places that it would amount to 25 percent.

Trial Examiner Norwood: Yes.

The Witness: Because that would take a dollar and a quarter freight rate.

Trial Examiner Norwood: It would range, then, from 15 to 20 percent?

The Witness: Well, I would—purely a guess. I
2313 would guess that the average freight, country-wide, would be in the neighborhood of $10 to 12 a ton. That would be approximately 10 to 12 percent of the—

Trial Examiner Norwood: Thank you.

The Witness: —of the—of the selling price.

By Mr. Stewart:

Q. Now, Major Quinn, does your company have costs which are incurred in connection with your conduit busi-

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ness and which remain substantially constant under varying rates of production?

2314 A. We have—we have overhead costs and plant costs which are constant as to the production for the month, but if you produce more conduit in one month than another that cost per ton is less, and there is a greater production when there is—when it is smaller, but the overhead charges, the fixed charges, as they are commonly called in accounting, are present at all times with us whether we produce one ton or capacity.

2315 By Mr. Stewart:

Q. And to what extent is that a part of the cost of your production of conduit under a normal rate of production?

Mr. MacIntyre: I object. Going further afield now and asking what part of the total cost is the overhead cost.

Trial Examiner Norwood: Overruled. Go ahead.

By Mr. Stewart:

Q. I don't mean a percentage. It is small or large?

A. It is a sizeable charge.

Q. Now, in your experience state what you have found with regard to whether buyers of conduit will commonly pay any higher price for the conduit produced by your company than for the conduit of like type and size produced by any other manufacturer?

Mr. MacIntyre: I object to that. He is asking now for the mental gymnastics of buyers, that is, what are the results of the—or goes through the minds of the buyers of conduit.

Trial Examiner Norwood: Objection overruled.

Mr. MacIntyre: You better have the buyers here.

Trial Examiner Norwood: Objection overruled. Overruled.

You base that on your experience there with these buyers and what you found that they will do under different circumstances?

2316 The Witness: Yes. I will speak entirely on our company's experience.

We have never known a buyer to pay us even a fraction of one percent more for our material than for any corresponding grade of material.

Trial Examiner Norwood: Your own customers. If

somebody else offered them the goods for a half a cent less, they will give them their order?

The Witness: Yes. I would qualify that. There are occasions, Mr. Norwood, in demoralized markets when somebody might come along and offer them a certain amount of material if they take it quickly at a cut price, but they would weigh the fact that they had been our customers for years, and it probably would be to their advantage to continue with us rather than to buy some, what we call, penalty goods.

By Mr. Stewart:

Q. Now, Mr. Quinn, at page 1885 of the record Mr. Williams testified with reference to a conversation he had with you as follows:

"I asked him"—that is referring to you—"about how it came about that they adopted those jobbers' compensations in the various brackets on that price card, I believe it was 76, and he told me that those were suggested by the wholesalers' association, that they had been worked out by the cost committee, and I believe he told me
2317 that they had a meeting, a joint meeting, with the wholesalers association in January, 1936, and that at that time the jobbers had urged that they adopt these consignment contracts with the jobbers' compensations as they had figured out. And I believe he said at the next meeting of the Association which, as I recall it, was some two weeks later—I am not sure about the exact date, but I believe it was January 27, 1936. * * * Well, he said that that meeting after the joint meeting was a meeting at which—at which Mr. Blake recommended the adoption of these uniform consignment contracts and the margins of compensation for the jobber as well as the specific building contracts, and, if I recall correctly, he told me that it was the meeting at which Mr. Bennett stated that he was going to adopt those contracts for his company and that was the time they were formally adopted by the other members of the Association. However, he said in some instances there were some companies who did not adopt those contracts but they attempted to make their contracts conform to those particular ones which Blake had recommended."

Now, I ask you to give us your recollection of your conversation with Mr. Williams on the subjects covered in his answer.

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A. Well, Mr. Stewart, you will have to break that down into different items.

Q. All right.

2318 A. I can't answer the whole thing. There are some statements in there that are relatively correct, and others are statements in there that would be one man's interpretation of what had been said.

Mr. MacIntyre: I object to a breakdown of the thing other than what has been. I object to any other procedure being used than that the witness answer the question that has been propounded to him or answer some other question that can be put to him without reading the transcript to him. If he can't answer it after reading the transcript, then I suggest that questions be put to him without reading any portion of the transcript.

Trial Examiner Norwood: I think that this witness may be given a full and complete chance to reply to that evidence here of this conversation with him. I would suggest that the counsel break it down as the witness desires. It will simplify the whole thing to read just as little of that excerpt again as you can.

By Mr. Stewart:

Q. Now, I direct your attention—

Trial Examiner Norwood: Objection overruled.

Go ahead.

Q. I direct your attention to the portion of Mr. Williams' testimony in which he says:

"• • • he"—that is you—"told me that those"

2319 —that is the jobbers' compensations—"were suggested by the Wholesalers Association, • • •."

Did you tell Mr. Williams that?

A. You mean the ones that we adopted?

Q. Yes.

A. The ones that we adopted were not the ones that were suggested at the luncheon in New York.

Q. First, I should—

Trial Examiner Norwood: What difference was there between them?

The Witness: Well, ours was lower than—I have already testified to that subject, you know, in Pittsburgh.

By Mr. Stewart:

Q. Well, the point is, I want to know what you told Mr. Williams. First, did you tell him that they were suggested by the Wholesalers' Association?

A. Not the ones that we adopted. Some were suggested by the jobbers who had attended the luncheon; not the Association.

Q. All right.

A. The figures that were used by those jobbers that were with us was the data that was obtained by the Wholesalers' Association through a questionnaire.

Q. Then he goes on further:

"* * * I believe he told me that they had a
2320 meeting,"—that is, the conduit manufacturers— "a joint meeting, with the Wholesalers' Association in January, 1936, * * *."

Do you recall telling him that?

A. Not—not with the Jobbers Association. It was with these groups of jobbers.

Q. And then he goes on:

"* * * and that at that time the jobbers had urged that they"—that is, the conduit manufacturers—"adopt these consignment contracts with the jobbers' compensations as they had figured out."

A. Without reading a consignment contract to refresh my mind, I don't think the jobbers' compensation is part of the contract.

Q. Well, what I want to know is do you recall having told Mr. Williams what I have read to you?

A. I do not.

Q. You say that you did tell him that or that you did not tell him that?

A. I couldn't have told him that because, to the best of my recollection, it is not a part of the contract.

Q. Now, Mr. Williams goes on:

"Well, he"—that is you again—"said that that"—at that, I guess—"meeting after the joint meeting was a meeting at which—at which Mr. Blake recommended the adoption of these uniform consignment contracts and
2321 the margins of compensation for the jobber as well as the specific building contracts, * * *."

What if anything did Mr. Blake have to do with the compensation for the jobbers?

A. Mr. Blake did not have anything to do as to the compensation of the jobbers. That was determined by whoever brought out the card when, as, and if they do bring out the card.

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Q. Well, is it your recollection that you told Mr. Williams that?

A. The whole—his whole statement is a man's recollection of the conversation two or three years ago. Now, from what you have just read there, you speak about the jobbers' compensation in the building contract. There is no reference in the building contract to compensation.

Q. Mr. Williams said that Mr. Blake recommended the adoption of these uniform consignment contracts and margins of compensation for the jobber as well as the specific building contracts.

A. Oh, I—I—I wouldn't—well, frankly, I don't recall whether or not I—as you have read it to me now, whether I discussed that with Mr. Williams or not. The minutes of the meeting that—

Q. No. You will just have to direct your attention to the conversation as you recall it.

Now, at page 1887 Mr. Williams says:

"I asked him"—that is you—"what the purpose of 2322 it was,"—referring to a traffic committee—"and who —what men were on it, and I am sure that he mentioned one specifically, and that was Mr. Kim, with National Electric Products. There was also two others whose names I am not sure about, and that was—I believe that one of them was Mr. Welch with Youngstown Sheet & Tube, and the other was Mr. Matthews of Central Tube Company, and, as I recall it,"—and this is the part to which I direct your attention—"I asked him what that committee was for, and he told me that there was quite a difference in their ideas as to what freight rates should be charged, and that committee was set up for the purpose of trying to equalize the freight rates and to arrive at a common freight adder."

A. That statement is entirely incorrect. I never made such a statement because there never was such a consideration before us.

Q. And what, if anything, could you have said about that committee being appointed to arrive at a common freight adder?

A. What I told Mr. Williams was this, that the traffic committee was appointed, each being a traffic man, to get from the freight bulletins, that is, the official classification, the actual freight rates, and then these three men would compare what they had taken out of the freight bulletins, and if there was any difference they then checked to find

out who was right and who was wrong. But whatever they put into these bulletins was the published rate,
2323 and it was not a question of equalization or arriving at any common rate; it was simply to publish the rates when you did publish them at the correct published Interstate Commerce Commission rates.

Q. Now, then, Mr. Williams goes on and he says:

"Well, I didn't know what he meant by 'adder' to begin with, so I asked him, and he explained that it was an amount added to the price to constitute a delivered price, and then I asked him why it was necessary to have them uniform and, if I recall his statement in that respect, he said it was to prevent one manufacturer from quoting a lower freight rate than another on the same product and thereby getting a price advantage."

A. That must have been Mr. Williams' imagination, because I could not have told him such a thing as that.

Q. And is that a fact?

A. It is not.

Q. Now, at page 1889 Mr. Williams said:

"Well, as I recall it, I asked him if the company had any warehouse stocks established, and I believe he told me they didn't, that it was a very uneconomical practice to establish warehouse stocks in a territory where the company already had consignment stocks, that its own warehouse stocks would be competing with its consigned stocks and that that was one of the questions that had
2324 been discussed at Association meetings, and most of the members had decided they wouldn't establish any further warehouse stocks primarily because of a request on the part of the Jobbers Association that they refrain from doing so."

Mr. MacIntyre: What page is that on?

Mr. Stewart: 1889.

By Mr. Stewart:

Q. Did you tell Mr. Williams that?

A. I did not. I explained to him—the first part of it is correct, that it is uneconomical and that it competes with our consigned stocks, but when he goes on to the understanding among the manufacturers that they want to abolish the warehouses and when he brings in a reference to the Jobbers Association, that was not a part of our conversation, as I recall it.

Q. Well, what, if anything, did the Jobbers Associa-

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tion have to do with the warehouse problem? That is, the abolition of the warehouses?

A. We were approached by our customers in times gone by to do away with our warehouses. Our better jobbers have always objected to warehouses because it put the so-called cheap jobber in a position to compete with the established jobber and allow him to get our conduit out of warehouse as economically as the large one did, in carload lots.

Q. At page 1892, Mr. Williams testified:

2325 "Well, as I recall it in that connection, he didn't say that the Association took any action towards discontinuing warehouse stocks other than all the manufacturers felt that they could comply with the wishes of their customers, so to speak; these consignment agents were their customers, and as I recall it he said that they—that is, this conduit committee—and I believe that he said that Mr. Drury was the head of that conduit committee at the time, and that the manufacturers discontinued these warehouse stocks at the request of this Wholesalers Association."

A. Well, that is not a correct statement.

Q. And he continues:

"That was in 1937. He said they were not supposed to establish any new stocks and discontinue those they had in existence as of August, 1937, if I recall the month correctly."

A. What I said to him was that we did not intend to establish any new stocks and we were going to eliminate what we had as fast as we could.

Q. And by "we," who do you mean?

A. The Enameled Metals Company.

Mr. Stewart: Will you give me about three minutes now? I think I am about through on direct.

Trial Examiner Norwood: Five minutes' recess.

(There was a short recess taken.)

Mr. Stewart: Just two or three more questions

2326 and I am through.

By Mr. Stewart:

Q. Mr. Quinn, when you talked about pipe you referred to merchant pipe. Is there any difference between that and standard steel pipe?

A. Well, standard steel pipe is the proper name, but to us who live in Pittsburgh we call it merchant pipe be-

cause at one time there were two weights of buttweld and lapweld pipe. Today there is only one, and the merchant pipe was the pipe that was used in plumbing, and so forth. Today there is only the one weight—I mean for standard steel pipe.

Of course, you have bedstead tubing and a number of other pipes, oil company goods, all of which are different. But the ordinary pipe that we use is what is known as standard steel pipe.

Q. Now, in the minutes—

A. And wherever I have stated "merchant pipe" that is what I mean, the standard steel pipe.

Q. Now, in the minutes of the Association there is some reference to an inquiry as to recognized jobbers, and I should like to ask as to whether or not at any time the Rigid Steel Conduit Association had an established list of jobbers whom they would recognize or whom they would not recognize.

A. We have never had an established list that would recognize or would not recognize any jobber, and we
2327 were never able to get hold of a list, even that published by the McGraw Company, that was anywhere near accurate, and that is not a list to establish who shall and shall not be sold, but it is merely a directory, and that is not correct.

Mr. Stewart: You may cross-examine.

Oh, I am sorry. Mr. Austin wants to ask some questions.

Mr. Austin: May I ask some questions?

Trial Examiner Norwood: Yes.

By Mr. Austin:

Q. Mr. Quinn, you stated in Pittsburgh that you had attended meetings of the National Electrical Wholesalers Association at their semi-annual conventions.

A. That is correct.

Q. And you stated that you had attended meetings of its Conduit Committee.

A. That is correct.

Q. Did you after conventions of the Electrical Wholesalers Association were over receive from it copies of the report of the Conduit Committee?

A. It was their custom to send us, those who attended, a copy of the—of what transpired, and with the request that if this was not a correct statement of fact that we call any changes to their attention that should be made.

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Q. Did those Conduit Committee reports that you
2328 received contain recommendations with respect to the handling of conduit for both manufacturers and wholesalers?

A. Well, my recollection is that they were primarily based on the handling by the jobbers. I don't think they had any reference as to how manufacturers should conduct their business.

Q. Did you always acquiesce in any recommendations made with respect to how the wholesalers should handle conduit?

Mr. MacIntyre: I object to the question. It calls for a conclusion. Let us find out what he did do and then we will determine whether he acquiesced or not.

Trial Examiner Norwood: Objection overruled.

The Witness: Will you read that, please?

(Question read.)

A. My answer would be I did not, although the form of the question would infer that I had the passing on of these subjects, which I did not.

Trial Examiner Norwood: As a manufacturer?

The Witness: As a manufacturer I did not always agree with their recommendations.

By Mr. Austin:

Q. Did the fact that you did not agree with their recommendations make any difference in your relationship with your jobber-distributor agents?

A. None whatever.

2329 Q. The Commission has put in evidence Commission's Exhibit 636, which I show you, and ask if that is a letter which you wrote to Mr. Alfred Byers.

A. This is my letter.

Q. Thank you.

Did you feel free at all times after receiving reports of conduit committees to write letters of this kind, taking exception to recommendations, pointing out why you would not follow them?

A. I did.

Q. Is the fact that you had written this letter, or any other similar letter, make any difference in your relations with your jobber-distributors?

A. They did not.

Mr. MacIntyre: Just a minute.

I object to that question because it calls for a conclusion.

Let us find out what this man did and then we will determine what effect they had.

Trial Examiner Norwood: Overruled.

Mr. Austin: If Your Honor please, what the man did is in that exhibit. We do not have to find out about it.

Trial Examiner Norwood: Go ahead.

Mr. Austin: Did you answer the question, sir?

Trial Examiner Norwood: Yes, he did.

Mr. Austin: That is all.

2330 Trial Examiner Norwood: Any other counsel desire to question the witness?

By Mr. Taylor:

Q. Major Quinn, do you recall a question by Mr. Stewart in connection with Commission's Exhibit 531, which was a letter to Mr. Bedient from you?

A. That is correct.

Q. Is this a correct statement. That you said that while there was no approach made to you by the Conduit Committee or by the Wholesalers Association, that some jobbers who were customers of yours may have approached you in connection with the matters dealt with in that letter at the Hot Springs meeting which preceded the date of the letter?

A. That is correct.

Q. Was the Westinghouse Electric Supply Company one of your customers at that time?

A. The Westinghouse Electric Supply Company up to about a year ago was not a customer of ours.

Trial Examiner Norwood: Any further questions?

2231 Mr. Tucker: On the record.

Mr. MacIntyre and myself, as attorney for Laclede Steel Company and Laclede Tube Company, have entered into a stipulation, the purpose of which is to make it unnecessary for Mr. Oberhauser to come from St. Louis to testify to these few facts that are contained in the stipulation.

Mr. MacIntyre: I agree that the stipulation may be entered upon the record; that is, copied by the Reporter.

2332 It is undated, therefore it would be given the date of today's record, of course.

Trial Examiner Norwood: Yes.

The stipulation is as follows:

STIPULATION WITH REFERENCE TO OFFER OF PROOF BY RESPONDENTS LACLEDE STEEL COMPANY AND LACLEDE TUBE COMPANY.

It is hereby stipulated by and between counsel for the Federal Trade Commission and counsel for respondents Laclede Steel Company and Laclede Tube Company as follows:

1. That if T. W. Oberhauser, who previously testified in this proceeding as a witness at the instance of the Commission were recalled by counsel for respondents Laclede Steel Company and Laclede Tube Company as a witness in their behalf, and duly sworn, he would testify in substantial conformity with the statements set forth in the following paragraphs 1 to 10, both inclusive, of the Offer Of Proof herein of respondents Laclede Steel Company and Laclede Tube Company, a copy of which has been duly received by counsel for the Federal Trade Commission.

2. That it may be deemed that T. W. Oberhauser has been so placed upon the stand, duly sworn and that he has so testified; and that said offer of proof may be marked as an exhibit in this case; and that said paragraphs 1 to 10, both inclusive, of the Offer Of Proof herein, may
2333 stand if received into the record here as evidence of the testimony of said T. W. Oberhauser introduced in the support of the defense of respondents Laclede Steel Company and Laclede Tube Company herein, subject, however, to the right of counsel for the Federal Trade Commission to urge any and all objections to the competency, materiality, or relevance of such testimony, or any part thereof.

3. That the statements contained in the said offer of proof will, if received in evidence, be given the same weight as if oral testimony had been offered and received to the same effect.

4. That counsel for the Commission shall have the right to move to strike any portion of said offer of proof and that said motion shall have the same force and effect as though a witness were interrogated on matters contained in the said offer of proof and counsel for the Commission had stated objection to the questions propounded to such witness. Said motion to strike shall be deemed to have been made as objection for all purposes of this record prior to any statement made by such witness.

5. That any portion of the said offer of proof, if struck

pursuant to such motion, shall constitute and for all purposes be deemed to be a rejected offer of proof in order to permit a review as to the correctness of the ruling on the motion and it shall not be deemed to constitute testi-
2334 mony of the witness.

6. That cross-examination of the said T. W. Oberhauser is waived by counsel for the Commission on the matters contained in this offer of proof.

7. It is an inseparable condition of this stipulation that nothing contained herein shall be deemed to constitute any admission whatever on the part of either the Federal Trade Commission or its counsel that any of the statements contained in said paragraphs 1 to 10, both inclusive, of the Offer Of Proof herein, are true.

The sole purpose and intent of this stipulation is to shorten the hearing of the above entitled proceeding and to enable respondents Laclede Steel Company and Laclede Tube Company to put in their defense herein without the necessity of calling T. W. Oberhauser as a witness from St. Louis, Missouri, to Washington, D. C.

OFFER OF PROOF OF RESPONDENTS LACLEDE STEEL COMPANY AND LACLEDE TUBE COMPANY.

To the Federal Trade Commission:

Respondents, Laclede Steel Company and Laclede Tube Company hereby offer to prove by T. W. Oberhauser the following facts, to-wit:

1. Respondent Laclede Tube Company resigned its membership in The Rigid Steel Conduit Association June 1, 1936.

2335 2. Respondent Laclede Steel Company owned all of the capital stock of respondent Laclede Tube Company from about 1931 to and including December 1, 1936.

3. Respondent Laclede Steel Company was not engaged in the manufacture and sale of rigid steel conduit prior to December 1, 1936, but respondent Laclede Tube Company, its wholly owned subsidiary, was engaged in the manufacture of rigid steel conduit from 1931 to December 1, 1936.

4. Respondent Laclede Tube Company was engaged in the manufacture and sale of steel conduit from the date of its incorporation in 1930 until the date of its dissolution in 1936.

5. Respondent Laclede Steel Company was never a

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member of the respondent Rigid Steel Conduit Association but its wholly owned subsidiary, the respondent Laclede Tube Company, was a member of The Rigid Steel Conduit Association for a period of a year and one half immediately prior to June 1, 1936.

6. Respondent Laclede Steel Company has had no form of Specific Building Contracts.

7. The Maximum capacity of respondent Laclede Steel Company for the manufacturing of rigid steel conduit is 200 tons per month. The maximum capacity of respondent Laclede Tube Company was no larger than that.

8. The total sales of rigid steel conduit as made
2336 by either respondent Laclede Steel Company or respondent Laclede Tube Company in any one year has never exceeded 1800 tons.

9. Respondent Laclede Steel Company manufactures no BX and only a very small percentage of its production is devoted to the production of thin wall conduit.

10. In a number of instances the prices appearing in respondent Laclede Steel Company's price cards were not adhered to in its sales of conduit and in certain instances respondent Laclede Steel Company has offered to sell and has sold conduit at prices other than those quoted in its published price card schedules.

(Signed) Everette MacIntyre,
Counsel for the Federal Trade Commission.

(Signed) Milton H. Tucker,
Counsel for Respondents, Laclede Steel Company and Laclede Tube Company.

Trial Examiner Norwood: Does that end that?

Mr. Tucker: Yes, sir.

Trial Examiner Norwood: Recess until 10 o'clock tomorrow morning.

Mr. MacIntyre: Just a second, if Your Honor please.

2337 Trial Examiner Norwood: All right.

Mr. MacIntyre: There is a certain proposal in here that needs to be taken care of before adjournment.

Trial Examiner Norwood: All right.

(Discussion off the record.)

Mr. MacIntyre: That is all right.

Trial Examiner Norwood: Recess till 10 o'clock tomorrow morning.

(Whereupon, at 4:05 o'clock p. m., December 3, 1941, the hearing in the above-entitled matter was adjourned.)

2340 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to the adjournment on yesterday, the hearing in Docket 4452 is now reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C.

Please note the appearances.

L. R. QUINN thereupon resumed the stand and testified further as follows:

Cross-Examination by Mr. MacIntyre.

Q. Major Quinn, during yesterday afternoon Mr. Stewart questioned you at considerable length concerning a conversation that you had had with Mr. Samuel L. Williams, investigator of the Federal Trade Commission. Do you recall?

A. Yes, sir.

2341 Q. Do you recall your testimony yesterday and the questions he asked you about that?

A. I would say I do, yes.

Q. And you recall your conversation with Mr. Williams?

A. Well, may I ask this question? Mr. Williams was the last man, wasn't he? There were two investigators from the Federal Trade Commission, and I believe Mr. Williams was the last man in our office.

Q. There were more than two, but at least two.

A. Well, the last man was merely a conference and checking our invoices. Mr. Williams was the heavy set man. The other man was out a year before that. Mr. Williams was the last investigator, wasn't he?

Q. Do you recall Williams having examined you more than once?

A. No, only once.

Q. You have recollection, then, of him having talked to you only one time?

A. That is all.

Q. And when was that?

A. I would say—I would say that was the—it was either the late spring of '39 or '40.

Q. And do you recall in that conversation that he asked

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you to state,—that is, to tell him about the matters on which you reported to your competitors at a meeting
2342 that you had with them on January 7, 1937, and January 27, 1937?

A. Well, he discussed with me the meeting of—the first meeting. I rather believe he talked about the other, too. I know that he talked about the first meeting.

Q. And what did he ask you about those two meetings?

A. Oh, he just asked me what went on and what it was about.

Q. What did you tell him?

A. I told him it was a meeting called of representative jobbers in the United States. There seemed to be some contention on their part that our card was not published in the correct way, and that some consideration should be given to their cost of doing business, and I had nothing to do with the calling of the meeting, but it so happened that I presided at the meeting.

Q. And you made reports to those present at the meeting?

A. I made reports to the Rigid Steel Conduit Association of the results of that meeting.

Q. You are talking about—you presided at the meeting and made reports at the meeting. You are talking about the meeting of January 27, 1937?

A. No; I am talking about the first meeting, which was earlier in January.

Q. January 7, 1937?

A. January 7.

I reported to the Rigid Steel Conduit Association of
2343 the results of the discussion on January 7. Now, whether that second meeting was held January 27 or not I would have to refer to the minutes to refresh my mind. I would assume that was about the time.

Q. The record of those minutes—I mean the records of those meetings and what you did at the time correctly portray what took place?

A. I would say they do, yes.

Q. And did you tell Mr. Williams what took place at the meetings?

A. I did.

Q. And did you tell him that the same things took place as the minutes show that took place?

A. I gave him the minutes, let him read them.

Q. I know, but you made statements to him about what took place, too; didn't you?

A. I presume during the course of the conversation, he read the minutes first, then he discussed it with me; so I naturally would make some statements about what took place.

Q. And did you tell him at that time that what took place at those two meetings was the same things as shown by the minutes to have taken place?

Mr. Stewart: Just a moment, now. There is some confusion evidently unless Mr. MacIntyre misunderstands.

There is no minute of the meeting of January 7, as I
2344 understand it. There is a minute of the meeting of January 27 in evidence.

Mr. MacIntyre: Well, we will have to rest on what the record will now and eventually show in that respect, Mr. Stewart.

I want to, however, now, continue the questioning of the witness on it.

Trial Examiner Norwood: Your question assumed that those are in the record. I think you had better clarify that.

Mr. MacIntyre: Yes. In so far as there are minutes, I will amend my question to that effect.

The Witness: Now, what is the question, please?

(Question read.)

The Witness: You mean minute; don't you? Minute of one meeting?

By Mr. MacIntyre:

Q. Yes.

A. I assume that I did.

Q. And what did take place, Major?

Mr. Stewart: Now, at which meeting are you talking about?

Mr. MacIntyre: First, we will take the first meeting, January 7.

Mr. Stewart: January 7?

Mr. MacIntyre: January 7, 1937; yes.

2345 A. The jobbers had asked that we take into consideration in the publication of a price card the amount of compensation they were entitled to to properly handle the goods; and they brought into the meeting the results of a--of an investigation that they had made

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countrywide—that is, purported to be countrywide—showing the average cost of the jobbers for handling different size orders and handling conduit.

By Mr. MacIntyre:

Q. Who made that survey?

A. I believe—well, now, I would just have to surmise it was made by the N. E. W. A. It was presented as a—as a questionnaire prepared—as a survey made by the N. E. W. A. Now, whether they actually made it I don't know. I assume they did because I always understood it to be a survey made by the N. E. W. A. which, I believe, was later filed with the Department of Commerce.

Q. Who in the N. E. W. A. made it?

A. Who made it?

Q. Yes.

A. I am not a member of the N. E. W. A. I haven't the slightest idea.

Q. Was it reported to you at the time of your meeting with them on January 7, 1937, as to who made that?

A. It was not reported. I have a pretty good idea who was the chairman, but it isn't from firsthand knowledge.

2346 Q. Well, who was?

A. My understanding has always been that John Johannessen was the chairman of the committee that made the survey.

Q. With what company was he affiliated?

Mr. Stewart: Let us get that spelling right while we are at it. It is a difficult name.

Mr. Austin: It is J-o-h-a-n-n-e-s-s-e-n, is my recollection of it.

Incidentally, off the record—

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. MacIntyre: What is the last question?

(Question read.)

A. To the best of my knowledge and belief, he was affiliated with the General Electric Supply Corporation.

By Mr. MacIntyre:

Q. And who served on the committee with him?

A. I don't know.

Q. Do you know what methods he used in preparing this report?

A. I haven't the slightest. I assume it was the result of questionnaires sent out to all the members, but I have no knowledge of that fact. That is the usual way of gaining information of that kind.

Q. Now, what else did you learn at this meeting
2347 in the early part of January, 1937, that you had with representatives of N. E. W. A., which they are purported to have brought to your attention?

A. They were not representatives of N. E. W. A., as I recall. They were jobbers who were invited as representative jobbers in the different parts of the country.

As I say, I didn't call the meeting and you will have other witnesses here who were responsible for the meeting. I always understood the meeting to be a meeting of jobbers. There was some of our customers there and some that were not our customers.

Q. Do you want us to understand now that from this testimony of yours that the people who submitted this report to you at that time were not representing the N. E. W. A.?

A. As far as I know, they were not.

Q. And who did you understand that they were representing when they submitted this report to you?

A. The jobbers of the United States.

Q. Oh, all of the jobbers?

A. Yes.

Q. Those in the Association and those outside?

A. Yes.

Q. The total.

A. That is what I--that was my own—that was my own understanding.

2348 Q. And how did you come to understand that they were elected to represent all of the jobbers in the United States in the submission of this report to you on that occasion?

A. Mr. MacIntyre, I have already testified that I didn't call the meeting. I don't know the methods by which the meeting was called. I was invited to attend myself, and how these men were selected, why they were asked, whether they were elected to represent the jobbers, I have no knowledge and I can't testify.

Q. How did you come to understand that they represented all of the jobbers in the United States?

A. From the conversation that took place at the luncheon.

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Q. Who told you that?

A. Well, I don't remember now. I would say there were probably fifty or sixty people there, at least thirty-five.

Q. Did this representative of the General Electric Supply Corporation tell you that?

A. To the best of my knowledge and belief, Mr. Johannessen was not there.

Q. Who on his behalf submitted the report carrying his name as Chairman?

A. On his behalf? Nobody submitted a report on his behalf or carrying his name as chairman. Mr. Walter Drury, as I recall, presented the figures, but he simply identified them as the result of a questionnaire that
2349 the N. E. W. A. had prepared.

Q. Is it your testimony now that the report that was submitted in that connection did not carry the name of Mr. Johannessen as chairman of the committee that made the survey?

A. It is my testimony that I don't know whether it did or did not.

Q. You don't know whose report it was, then?

A. Except, as I have testified before, I have since understood it was prepared by a committee headed by Mr. Johannessen; at the time I didn't know who prepared it.

Q. You don't know who elected Mr. Johannessen and the other members of his committee to make the survey?

A. I neither—I neither do not know who selected them nor the purpose of why they were selected.

Q. And you do not know who they represented in the submission of the report?

A. I always understood the report was prepared by the N. E. W. A., but I haven't competent information to state it was solely and wholly a report of the N. E. W. A.

Q. And you got that information and understanding during the course of your meeting with them and the representatives of these jobbers at this meeting in the early part of January, 1937; is that correct?

A. That is correct.

2350 Q. And now after you got the information on that occasion what did you do about it?

A. I wrote a summary of what I considered the discussions at the meeting and submitted it to the Rigid Conduit Association at the next meeting of the Rigid Conduit Association.

Q. Now, Major, I want you to be just as full and complete in what you can tell us for the record at this time as you were with Mr. Williams on the occasion of his conversation with you as to what took place at that meeting of January 27, 1937, at the Biltmore Hotel in New York as held by representatives of the Rigid Steel Conduit Association and at which you submitted this report on this survey.

A. Well, Mr. MacIntyre, that is an impossible question.

Mr. Stewart: Wait a minute.

A. (Continuing.) Two years have elapsed. I can't possibly recite to you today what I recited to him at that time.

Mr. Stewart: Just a moment until I get the question, please. It is one of those involved things.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Stewart: Now, you are talking about the meeting of the Rigid Steel Conduit Association of January 27? Aren't you confusing the two affairs? That is what I am trying to get at.

Mr. MacIntyre: I do not think the question refers
2351 to but one meeting, and that is the meeting of January 27, 1937.

Mr. Stewart: Well, that is the regular meeting of the Association you are talking about in which Mr. Quinn made the report.

Mr. MacIntyre: Yes.

Mr. Stewart: All right, just so I understand.

Trial Examiner Norwood: Go ahead. Have you completed your answer?

The Witness: I said it is impossible for me to make as full and complete a statement now as I did two years ago.

By Mr. MacIntyre:

Q. Well, now, suppose you tell us—you can tell us today as well as you told Mr. Stewart yesterday what took place at that meeting, can you, Major?

Mr. Stewart: I object. That is argumentative. I asked the man specific questions as to whether he told Mr. Williams certain facts, and he said he had not to a certain extent. I did not ask him about the general conversation.

Trial Examiner Norwood: Now—

Mr. Stewart: If Mr. MacIntyre will just ask Mr. Quinn what was the conversation he will get it.

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Trial Examiner Norwood: I think you had better go at it directly without reference to any other state-
2352 ments he made. You are privileged and I am privileged to compare these statements on the record.

Mr. MacIntyre: Well, if Your Honor please, the witness has already stated that he told Mr. Williams on this occasion in 1939 and 1940 about these details of happenings of the meeting in January, 1937.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Now, he told Mr. Stewart yesterday on direct examination what happened in his conversation with Mr. Williams. Well, if they are both one and the same thing which he told Mr. Stewart yesterday and again to me this morning, I can't see why I can't ask him to tell us about it from either one of those two angles. If they are the same thing, they are the same thing.

Trial Examiner Norwood: Well, if you have in mind for him to tell you the same thing that he told yesterday, I am afraid you will have to give him the record and see what he told yesterday. Now, if you want to bring out these facts so as to compare them and show any discrepancy, and so on, you may ask him the questions and let him make answers, and ask him the same questions he was asked yesterday and see if he makes the same answers, if that is the purpose of your cross-examination at this time.

Mr. MacIntyre: Do I understand, Your Honor, that the ruling is that in an effort to impeach, contradict,
2353 or test the credibility of this witness, or his memory and recollection, that I must—that is, on matters about which he testified yesterday, that I must present him with his testimony of yesterday, or at least word the questions in the same way?

Trial Examiner Norwood: No, I never suggested that. You are trying to direct your questions to what he testified yesterday.

Mr. MacIntyre: Can I ask him different questions?

Trial Examiner Norwood: Yes, you can do so.

Mr. MacIntyre: Well, that is what I am trying to do.

Trial Examiner Norwood: It will probably be shorter to do that.

Go ahead.

I think the counsel misunderstood the purpose of my remark.

Go ahead.

Mr. MacIntyre: Will you read the pending question to the witness.

(Question read.)

A. Unless my memory fails me, Mr. Stewart did not ask me what took place at the meeting yesterday.

By Mr. MacIntyre:

Q. He asked you what you told Mr. Williams.

Mr. Stewart: No, I did not ask him what he told
2354 Mr. Williams. I submit what I asked him yesterday, and the record shows it, was as to whether or not different things that Mr. Williams said that he said were correct. That is all I asked him about. I have no objection to—

Trial Examiner Norwood: Wait a minute.

Can you tell him as well today about this thing as you did yesterday? That is the question. Can you or can you not?

The Witness: Well, may I ask Your Honor this?

It is the old catch question, "When will you stop beating your wife?"

Mr. Stewart did not ask me yesterday about my conversation with Mr. Williams. He asked me whether I made certain statements to Mr. Williams.

Trial Examiner Norwood: No. You are answering some other question. You just answer that, whether you can or whether you cannot, or whether you think you can or whether you think you cannot.

The Witness: I can answer the questions today as well as I answered them yesterday, provided they are put to me in the same general form.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. If they are put in a different form and dealing with the same matters, what about it, Major?

2355 Mr. Stewart: Try that.

A. If the result is the same, I can answer that.

Mr. MacIntyre: That is what we will try to do.

Mr. Stewart: Go ahead.

By Mr. MacIntyre:

Q. Now, will you tell us today what took place at this meeting of January 27, 1937, as reported—that is, con-

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cerning your report which you made at the meeting and about which you told Mr. Williams?

A. My recollection, Mr. MacIntyre, is that I handed Mr. Williams the minutes and said, "Now, there is the report on the meeting." And whatever he took from that, he took from the minutes, or from subsequent conversations that he had with me. Now, if I can have the benefit of those minutes, which I had at the time I talked with Mr. Wiliams, I can give a fairly comprehensive report of what took place; otherwise, it is going to be fragmentary.

Q. Well, just what was said and done at that meeting about your report?

A. I don't think there was any action on the report. I simply made the report and it was filed as a matter of record. I do not believe there was any—there could not have been any resolution or anything in connection with it because it was nothing about which a resolution could be drawn. I reported the request of the jobbers.

2356 Q. So the only thing that happened at the meeting about your report was that you made the report and it was filed and no comments and no agreements and no understandings were entered into concerning it.

Mr. Stewart: Now, just a minute. Let us take those one at a time.

Trial Examiner Norwood: He can have it re-read.

Mr. Stewart: I beg your pardon?

Trial Examiner Norwood: He can have it re-read. Have you completed your question?

By Mr. MacIntyre:

Q. Is that correct?

The Witness: Do you mind reading it, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. There were naturally comments concerning it, but no agreements or understandings concerning it.

By Mr. MacIntyre:

Q. Now, did you tell Mr. Williams about what the comments were?

A. I can't recall whether I did or not.

Q. How, then, could you recall yesterday in your reply to questions put to you by Mr. Stewart exactly what you did not tell Mr. Williams?

A. Because the statements that Mr. Stewart read me yesterday were absolutely incorrect in part. They
2357 covered a general subject, but the way he read it to me those statements were not correct, and I could not have made the statements that were accredited to me.

Q. If you can't recall what you told Mr. Williams at this time, how could you yesterday in reply to Mr. Stewart's questions brand the statements made by Mr. Williams as to what you had told him as being incorrect?

A. If a statement is read to me that is obviously incorrect, I could not have made that statement to the man. Now, if it is a statement that it might have been a case of a misunderstanding between my language and the way he recorded it, I believe I testified yesterday that some of the things he said were correct. Not everything he said was incorrect. But he made statements in there that I could not have possibly made because they never happened.

Q. Well, now, you have stated in response to the next-to-the last question that there were comments and discussions about this matter; that is, your report at this meeting, but that there were no understandings or agreements entered into concerning it. Do you recall that statement?

A. That is my answer; yes, sir.

Q. And you made that statement yesterday?

A. I do not believe I answered that question yesterday.

Q. You stated a number of times yesterday that you never had entered into any understanding or agree-
2358 ments with your competitors.

A. I still make the same statement. I never, for our company, at any time, meeting or otherwise, entered into an agreement or understanding with any competitor about what my price card or conditions were to be, other than possibly the discussions of trade practices, or something like that, which had no bearing on the price.

Q. In your mind, on that question, do you make any distinction between an understanding, a meeting of the minds as to the taking of a particular course, and an agreement?

A. To my own mind, an understanding and an agreement is practically the same thing, because if you have an understanding with a man it is virtually an agreement, the way I consider it.

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Q. What about the meeting of the minds of a group of people to follow a particular course of action?

A. Well, would you define a meeting of the minds? Do you mean we all met and discussed something and came to the same opinion? Is that what you mean by a meeting of the minds?

Q. Yes.

A. Wouldn't that be an understanding?

Q. Let us give that definition to it for the moment. What is your answer to it?

A. Well, I would answer that if a group of men got together, discussed something, and came to the same
2359 frame of mind as a result of that individual discussion, and then immediately went out and did what they thought of at that particular time, that would be an understanding.

Q. And they need not, at the time that they were discussing this in the course of the meeting, each have told the other that they were going to do that?

A. That is correct.

Q. In order for it to be an agreement or understanding?

A. That is correct.

Q. On that point, Major, let me put to you a hypothetical question.

Assume that at a given time you and several of your competitors, or representatives of your competitors, including Mr. I. A. Bennett, of the National Electric Products Corporation, had experienced disappointments because you and they ascertained—that is, that either you or they or some one of your competitors, or one or more of your or their distributors had made sales at prices below those quoted by you and your competitors in the price cards published by you and your competitors;

Assume further that you and several representatives of your competitors, including Mr. I. A. Bennett, of the National Electric Products Corporation, met and discussed your mutual disappointments;

Assume further that during the course of such
2360 discussion opinions were discussed that manufacturers and jobbers of rigid steel conduit were foolish to cut prices below the card quotations;

Assume further that one of those in attendance, Mr. Bennett, I. A. Bennett, of the National Electric Products Corporation, just before the meeting broke up, announced

that he considered the matter, his company had considered the matter, and considered that it was to the best interest to follow a certain specified course of action thereafter, and that the National Electric Products Corporation would in the future follow this best course of action;

Assume further that shortly after that meeting the National Electric Products Corporation, and a number of its competing manufacturers, manufacturers that sell rigid steel conduit, that were represented at that meeting, adopted the course of action, or at least a course of action which was in accord and harmony with the one mentioned and specified by Mr. Bennett at the meeting.

Now, to your mind does that set of circumstances present to you evidence of an understanding or agreement or meeting of the minds?

Mr. Stewart: I object to that on the ground it is not proper cross-examination, first. In the second place, it assumes a set of facts not in the record. Third, it is an assumption and asking a lay witness for a legal conclusion.

2361 Trial Examiner Norwood: No. He has given his definition of an agreement or understanding, and he can testify to that, and the counsel has a right to test that.

Mr. Houston: Your Honor, may I have the last part of the question read?

Trial Examiner Norwood: Yes.

(Last part of question read.)

Mr. Stewart: Well, now, you see, sir, "does that present to your mind evidence?" Now, you are asking a lay witness to give a legal opinion as to whether that amounts to an agreement.

Trial Examiner Norwood: You may ask him if that is consistent with his understanding of the terms "understanding" and "agreement."

Mr. Stewart: That's it.

Trial Examiner Norwood: Is that what you mean by the question, Mr. MacIntyre?

Mr. MacIntyre: I will amend this question in that direction.

Mr. Stewart: What direction are you amending it?

Trial Examiner Norwood: He is substituting for the word "evidence" there the word—

Read it again.

(Record again read.)

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Trial Examiner Norwood: Well, now, strike that 2362 and let him dictate that as he wants it.

"Does that set of circumstances"—now, go on and finish it.

By Mr. MacIntyre:

Q. Now, Major, does that set of circumstances just outlined present to you matters which you understand would constitute an agreement, understanding, or a meeting of the minds?

A. In answering this question I want it recorded that I consider this a hypothetical question, and that these conditions never existed.

As I understand the question, if they did exist would I consider that a meeting of the minds? My answer is no.

Q. You do not consider that that would constitute a meeting of the minds of those present?

A. Mr. MacIntyre,—

Q. At that meeting that I—

A. —you talked in this question about the subsequent publication of cards. In my limited business experience, I have always found it necessary to sell my product at the lowest existing price, and I am always greedy enough to increase my card if somebody else does first, and that is not a matter of meeting of minds or an understanding.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

2363 Q. How do you arrive at any understanding on your part as to whether a set of circumstances constitutes a showing of an agreement, understanding, or the meeting of the minds of a group of people?

Mr. Stewart: I submit that that question is not intelligible unless by that the counsel means what are his mental processes. Is that what he is talking about?

Trial Examiner Norwood: Read the question.

Mr. Stewart: "How do you arrive."

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I will sustain the objection to that. It is going into the psychology of his understanding there.

Mr. Stewart: Yes.

By Mr. MacIntyre:

Q. Is it necessary for you to have evidence of the happening of particular circumstances in order to arrive

at any understanding as to whether or not a group of people have entered into an agreement or understanding or meeting of the minds?

Mr. Stewart: I object to that as not proper cross-examination, and asking the witness for a conclusion of law. Now, if he wants to ask him how he defines an agreement, or something, that is one thing, but—

2364 Trial Examiner Norwood: Do you understand the question?

The Witness: Why, I—I could answer the question, yes.

Trial Examiner Norwood: Well, answer it. I will overrule the objection.

Mr. Stewart: All right, then. Go ahead.

Trial Examiner Norwood: Overrule the objection.

Mr. Stewart: I hope you had the question, because—

Trial Examiner Norwood: Read the question. Wait a minute.

Read the question.

(Question read.)

A. It is not necessary to have any evidence or anything else. If you would like me to give you my definition of what I consider an understanding or agreement or meeting of the minds, I will do it.

By Mr. MacIntyre:

Q. Let me ask you another question, then. If you don't require any evidence at all of the happening of any fact or circumstance in order to determine whether or not there has been, or to arrive at an understanding in your mind as to whether or not there has been an agreement, understanding, or meeting of the minds on the part of any particular group of people, then how do you determine

2365 from your analysis of anything as to whether or not there has ever been any understanding or agreement on the part of that particular group?

Mr. Stewart: Just a moment.

Now, I submit that that is just an utterly silly question. "If you don't require any evidence, how do you arrive at that?" I submit that that is not proper.

Trial Examiner Norwood: I submit that counsel should not start something by characterizing that as silly.

Mr. Stewart: Well, it is not silly, but—

Trial Examiner Norwood: But I think you can be a little more—

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Mr. Stewart: I beg your pardon for using that term.

Trial Examiner Norwood: Yes.

Mr. Stewart: But it does seem to me that it is an impossible question to answer because the question is, "If you don't require any evidence, how do you arrive at a conclusion?" If you don't have evidence you don't arrive at a conclusion.

Trial Examiner Norwood: Let us let the witness answer the question.

Mr. Bozeman: Your Honor, I wish to make an objection.

During the direct examination I recall that repeatedly objection was made by counsel for the Commission
2366 and suggestions were made by Your Honor to the effect that the questions should be framed in such a manner as to bring out the facts, and from those facts a conclusion could then be drawn as a result of briefs and consideration by Your Honor and the Commission. It seems to me that those comments of Your Honor should apply with all their force to these dubious questions that are now being put to the witness.

Trial Examiner Norwood: I thought of that just a few seconds ago. That is what we had all practically agreed on. We seemed to agree on the fact that on the direct examination questions should be specific, but this is cross-examination, and that is entirely different.

Mr. Bozeman: But what this witness considers an agreement or a contract or something that would put him under an obligation to somebody else it seems to me is immaterial because that is something to be considered on the basis of the facts, as to whether an agreement existed.

Mr. MacIntyre: That was my argument yesterday, Mr. Bozeman.

Trial Examiner Norwood: Probe his understanding there so as to get an answer as to exactly what he would understand by the term "understanding" or "agreement."

Read the question.

(Question read.)

Trial Examiner Norwood: Do you understand the
2367 question?

The Witness: I understand what he said, but I—the question is rather incomprehensible to me.

Trial Examiner Norwood: I think that counsel can clarify that question a little bit.

Off the record.

The Witness: May I ask Mr. MacIntyre this question? As I understand that question, if I picked up the morning paper and found that the American Federation of Labor had done something, and here was the evidence of the agreement, then I would have to read the evidence to find out what I thought of it, but if I am a member of a meeting, and I am going to have an understanding with a man, I don't see where the word "evidence" comes in, because I wouldn't require any evidence to have an understanding with him. I would have the understanding on my own mind, and I don't—I can't understand the question.

Trial Examiner Norwood: You were speaking from first-hand knowledge? Is that the idea?

The Witness: He asked me if I would have to have evidence before I could decide whether there was an understanding, and the way the question is framed, in my limited thought, is that it would be speaking of some third parties, and I have to have evidence before I understood that they had an understanding.

2368 Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. You told Mr. Stewart on a number of occasions yesterday that you had no knowledge of any agreement having been entered into between and among your competitors?

A. My testimony was that I had never entered into any agreement with any of my competitors.

Q. Oh, it is your testimony that you don't know, that is that—strike that.

Trial Examiner Norwood: Delete it.

Mr. MacIntyre: Strike it.

By Mr. MacIntyre:

Q. It is your testimony now that nothing you have said since you have been on the stand should be taken as indicating whether or not your competitors have had any agreement—

Mr. Stewart: I object to that.

Q. —on these matters; is that true?

Mr. Stewart: I object to that as an improper question in cross-examination.

Trial Examiner Norwood: I think you should confine

your inquiry to any of his statements, whether or not he has stated that these others didn't agree, and so forth, and so on.

Read the question.

(Question read.)

2369 Trial Examiner Norwood: I think that can be made a little more definite there. He has given testimony on a great many subjects and probably a great many inferences can be drawn from them.

Mr. Stewart: That is right. That is what I am objecting to. It seems to be very unfair.

Trial Examiner Norwood: Yes; it covers a very broad field there. Any statements on a particular subject you may inquire about.

Objection sustained.

By Mr. MacIntyre:

Q. Yesterday morning, Major, Mr. Stewart asked you as to whether or not there was any agreement concerning the use of the basing-point system by manufacturers of rigid steel conduit. Do you want us to understand from your testimony now that you are not attempting to speak concerning any agreement that existed between and among manufacturers of rigid steel conduit other than Enameled Metals?

Mr. Stewart: Now, just a moment, please. My idea is to give Mr. MacIntyre free rein with this witness. He is an interested party. I don't want to restrict him in any way, but, as I understood the ruling of the Examiner yesterday, I was confined in my questioning of this witness as to agreements and understandings as to what he or his company had done and that he could not speak for

2370 the rest of them. Now, I think that is unfair to put this question in this form to him because obviously he was only testifying as to what he himself or his company had done.

Trial Examiner Norwood: Was he not permitted to testify that these others had not, to his knowledge, entered into any agreements?

Mr. Stewart: I don't recall that, sir. As I remember it, the only question I asked him—I asked him—

Trial Examiner Norwood: I think I ruled that out, or instructed the witness to confine it to his own company.

Mr. Stewart: That is right, sir.

Mr. MacIntyre: I think you will find that the record shows that he was permitted to testify from his own knowledge of anything.

Mr. Stewart: What is the page number, please?

Mr. MacIntyre: I don't have it.

Trial Examiner Norwood: You may ask him a question to clarify that. If he has intended to imply that he knew or—

Mr. MacIntyre: I was intending to do that through the general question that I asked previously.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Is it your testimony now, Major, that you haven't attempted since you have been on the stand to state
2371 that you have knowledge as to whether or not your competitors have entered into any agreements or understandings?

A. I qualified my opening testimony by stating when I used the word "we" I referred to the Enameled Metals Company. If I understood the rulings of His Honor, he has repeatedly cautioned me I must not go afield of my own knowledge as referred to my own company. If there were any questions asked today for any knowledge of any agreements of my competitors, I would answer from my own knowledge that I would have no way of knowing, no possible way of knowing, what my competitors do. I am sorry that in American business we don't. We would save a lot of money if we did.

Q. Well, now, coming back to this meeting of January 27, 1937, you have said that you didn't enter into any agreement there, understanding, or meeting of the minds with your competitor. You were present, of course, and saw what took place among your competitors at that meeting; did you?

A. I was present.

Q. Now, what do you say as to what your competitors did at that meeting?

A. I still testify that the meeting of the conduit group was about 16 or 17 men. We would meet around a large table. All I can testify to is what anybody stood on their feet and said openly. If any of them by themselves discussed this I would have no knowledge—I would tes-
2372 tify that there was nothing said openly or for the

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discussion of the group that I recall at that meeting that even smacked of any understanding or agreement.

Q. Now, limiting this question to those things which are recorded in the minutes of the meeting as to what took place, you have knowledge, of course, of all of those matters?

A. Not without refreshing my mind by the minutes.

Q. No, but you have had?

A. I have had, yes.

Q. And it is on the basis of that knowledge of what the record shows took place at that meeting that you have stated that no one there entered into any agreement to adopt or otherwise utilize any course of action suggested by your report to the meeting; is that correct?

A. My testimony is that from my own knowledge I don't know of any. I—that is still my testimony. I have tried to enlighten you as to the fact that there was no discussion in the nature of an agreement concerning my report, to the best of my recollection and belief. I have no knowledge of doing it, and that is what my testimony intended to state.

Q. Would you look upon the record of what your competitors did at that meeting, and the record of what they did subsequent to that meeting and what they said during the course of that meeting, and what they did subsequent to the meeting as evidence of whether or not
2373 they had arrived at an agreement, an understanding, or a meeting of the minds on any matter that was taken up at the meeting?

A. Now, you refer to what they did after and at, and so forth. Are you referring to the recorded minutes?

Q. Yes.

A. If it is recorded in the minutes that they discussed certain things that clearly shows as an understanding, then, I will have to admit that my statement is incorrect as to their being no understanding at the meeting.

Q. What about a set of facts evidenced by the record of the meeting and actions of those participating in the meeting, as transpiring immediately thereafter, which are in accord with what was discussed at the meeting as evidence of an understanding, agreement, or a meeting of the minds? Would you say that it should be taken, that is, those sets of circumstances as shown by such evidence, as to whether or not there was a meeting of the minds?

Mr. Stewart: If for no other reason than to assert myself, I am going to object to this question on the ground it is not pertinent to any answer the witness has given as to his understanding as to what amounts to an agreement or understanding, but it is again asking him to pass upon one of the final issues in this case, namely, as to whether or not, when these things happen, that amounts to an understanding or an agreement as a matter of
2374 law. I submit that he is neither qualified nor is it proper cross-examination.

Trial Examiner Norwood: Now, when he was asked about these agreements, and denied certain agreements, counsel for the Commission objected to that on the grounds it was a conclusion.

Mr. Stewart: That is right.

Trial Examiner Norwood: I told him at the time he might cross-examine him to bring out his exact understanding of these terms, and that is all he is doing now.

Mr. Bozeman: Your Honor, the questions go far beyond a definition of terms. If Mr. MacIntyre would ask him what he means by the term "understanding" or "agreement," that would probably dispose of it, but he is probing in many different directions.

Trial Examiner Norwood: You have to go far beyond definition sometimes to get an exact meaning.

Objection overruled.

Read the question.

The Witness: Will you read the question, please?

(Question read.)

A. If the minutes of the meeting show that the Association discussed and decided to do certain things, and then it transpired that almost simultaneously everybody acted in exact accordance with what had been part of the minutes and in agreement, I think it is obvious there
2375 must have been an understanding, but if a report is read at a meeting discussing the requests of our customers—and we have always got to listen to the requests of our customers—and then if some man subsequently, or any group of them, of your competitiors, should bring out a card or a new condition or a new sheet which would in any way follow what I had reported at that meeting, I would say that that was not an understanding.

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By Mr. MacIntyre:

Q. Suppose the records of the meeting did not record the word "decided upon" but did record the words "discussed, expressed opinions, that such and such a course of action would be proper and to the best interests and that course of action was followed thereafter," would your answer be the same as to what took place at the meeting?

A. I would say there was no understanding or agreement.

Q. There would have to be some evidence in the form of a statement that they had decided upon the course of action; is that correct?

A. That would be my contention; yes.

Q. And anything short of that you would say wouldn't be evidence of any agreement?

A. Would not be evidence of any agreement.

2376 By Mr. MacIntyre:

Q. Major, assume that you and representatives of other manufacturers of rigid steel conduit attended a meeting at a given time of representatives of the National Electrical Wholesalers Association, and that during the course of that meeting representatives of that Association requested you and these other representatives of other manufacturers to adopt a particular course of action;

Assume further that you and the other representatives of these other manufacturers knew at the time that such request had been made of all of you;

Assume further that shortly after that meeting a number of the other manufacturers thus represented at the meeting adopted the course of action requested.

To your mind has there been any agreement, understanding, or a meeting of the minds on the part of those representatives of the manufacturers who attended that meeting and the representatives of the wholesalers
2377 in attendance at the meeting?

A. Well, answering this hypothetical question on the basis of what it says and not as having any element of fact, I would say that if the manufacturers simultaneously, at the same time, brought out cards, it would seem to be an understanding; but if one manufacturer brings out a card on the 12th, and another one on the 14th, and another on the 17th, and another on the 20th, I would assume

that was ordinary business practice of keeping abreast of your competition, and not an understanding.

Q. And all of that despite the fact that these announcements were issued shortly after that meeting?

A. What announcements?

Q. Made by the manufacturers, one on the 12th, one on the 14th, and the like.

Mr. Stewart: You mean the issuance of cards?

Mr. MacIntyre: Cards or announcements.

A. I have already attempted to testify, Mr. MacIntyre, that we are forced to meet competition.

Now, again speaking for our own company, we are not one of the larger companies, and we are forced to meet what competition we face.

You understand that one of our competitors owns their own string of supply houses, and they may do something with their own company which may be in their own
2378 case merely a matter of bookkeeping; but if it affected the competitive conditions in the United States, we would have to take such action to protect our customers or withdraw from the sale of material to our customers.

By Mr. MacIntyre:

Q. Well, now, reverting to this set of circumstances that I last assumed, will you say that there was no understanding, agreement, or meeting of the minds between any one or more of the manufacturers and the representatives of the jobbers who made the request to which I referred?

Mr. Stewart: I submit that that question is obviously incapable of an answer. If he asked the witness as to whether that would be his conception of an agreement or understanding that is one thing; but to ask him whether there was in fact an understanding, I don't see how he could answer that question.

Trial Examiner Norwood: Objection sustained.

Mr. MacIntyre: If Your Honor please, during the direct examination of this witness he answered a question as to whether or not that under a set of circumstances almost precisely like those there was an understanding among those to adopt this request, and he gave his answer to that question over my objection.

Mr. Stewart: Well—

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Trial Examiner Norwood: Whether or not to his
2379 knowledge.

Mr. MacIntyre: No; as to whether or not that there was an agreement.

Mr. Stewart: Well, if you point out the question and the answer—

Trial Examiner Norwood: I think we have gone far enough on this definition of terms.

Now, read that last question again.

Mr. Austin: I merely want to suggest that I think it is only fair to ask Mr. MacIntyre to show us these places in the record that he refers to so glibly.

Mr. MacIntire: I do not have the page numbers of the record. I have notes here that I made at the time. You have the record; I don't.

Trial Examiner Norwood: Now, let us have the question read.

Mr. Austin: If you made notes you can refer to the record and show it to us.

Trial Examiner Norwood: Read the question.

(Question read as follows:

"Q. Well, now, reverting to this set of circumstances that I last assumed, will you say that there was no understanding, agreement, or meeting of the minds between any one or more of the manufacturers and the repre-
2379-A sentatives of the jobbers who made the request to which I referred?")

Trial Examiner Norwood: You mean under the conditions assumed in the previous question?

Mr. MacIntyre: That is right; the last one that I assumed. They go to a set of circumstances embodied in questions by Mr. Stewart.

Trial Examiner Norwood: I think he may answer that one question.

I will reverse my ruling on that.

A. It is impossible for me to say what any other man does with his customer. I am incapable of answering your question, because you ask me whether somebody else did something, and it is not possible for me to know what any other—my competitor does with his distributor. I am sorry that I haven't got information of that kind.

By Mr. MacIntyre:

Q. Well, did you in answer to Mr. Stewart's question as to whether or not there was any agreement on the part

of any of these manufacturers to adopt the requests made by the wholesalers at this meeting in Hot Springs mean to say that there was no understanding on the part of any of these other manufacturers, or just what did you mean?

Mr. Stewart: Now, just a moment, please.

I object to that for the reason that it is not a correct statement as to the facts. What took place at Hot
2380 Springs was with relation to the jobbers, not wholesalers.

Mr. MacIntyre: Well, I will amend the question to say jobbers.

Mr. Austin: Well, I still have an objection, Your Honor. The Commission has just as much access to the record as we do. If he wants to refer to a meeting in Hot Springs, and put the kind of question that Mr. Stewart asked yesterday, let him get the record here so we will see if he is stating it correctly.

I personally have no recollection of the question of the meeting that Mr. MacIntyre has assumed here in relation to Hot Springs.

Mr. MacIntyre: I do not assume that question, Mr. Austin; that was asked.

Trial Examiner Norwood: Now, read the question.

Mr. Austin: All I am asking him to do is to show me the place in the record.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Stewart: Well, now, may I ask as a matter of fairness, instead of—

Trial Examiner Norwood: I think that the counsel can ask that same question and leave out the assumption and it will accomplish the same purpose.

2381 Mr. Stewart: May I ask, Mr. Examiner, in fairness to the witness, that Mr. MacIntyre specify what request he is talking about, because there may be several requests. Just to say "request" I don't know what he means.

Trial Examiner Norwood: I shall sustain the objection to the question in its present form.

By Mr. MacIntyre:

Q. Major, assume that representatives of wholesalers or jobbers made requests to representatives of manufac-

turers who were members of the Rigid Steel Conduit Association that they adopt more uniformity in their methods of handling stocks of conduit in the hands of the wholesalers or jobbers and specifically requested that a consignment stock agreement form be adopted for execution between manufacturers and the wholesalers or jobbers, and that subsequent to the receiving of such requests these representatives or members of the Rigid Steel Conduit Association employed Respondent Herbert S. Blake and discussed the matter with him, and that as a result of that discussion he submitted to them in a meeting a form of a consignment stock agreement that was in accord with the requests made by the wholesalers or jobbers, and that a number of the manufacturers immediately thereafter, or shortly thereafter, began the use of the form which was suggested by Mr. Blake.

To your mind does that present to you evidence of
2382 an understanding, agreement, or meeting of the minds of the persons involved?

Mr. Stewart: Now, wait a minute.

I object to that for the reason that it assumes a set of facts not in the record. It is true the record shows that in one of the minutes of the Conduit Committeee at Hot Springs there was some reference to a consignment contract, but what form of consignment contract was not specified. There was nothing—

Trial Examiner Norwood: I think that the counsel has gone far enough in testing this witness' meaning of the words "understanding" and "agreement." I let him answer a long hypothetical question, or several hypothetical questions. Now it is evidently going further than testing his understanding of the terms, and I think I shall sustain the objection.

Mr. MacIntyre: Well, if Your Honor please, would you care to hear me before you rule on that?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: You see, this happens to be one of a set of circumstances. It is one instance about which Mr. Stewart asked this man, as to whether or not there was any agreement, the adoption of this consigned stock agreement. Now, he of course, asked him other questions as to whether there were agreements.

It seems to me that we will not get the end point
2383 if I am not permitted in this particular direction to propound a hypothetical question to the witness for

the purpose of determining how his mind operates on this type of set of facts that bear directly on the question that was asked by Mr. Stewart concerning this particular instance.

Mr. Stewart: Well, now, may I point out to you—

Mr. MacIntyre: I objected to the question he asked as being a conclusion.

Trial Examiner Norwood: All right.

Mr. MacIntyre: And asked that we rest on the facts, or that the witness specify the facts, but he did not do it.

Trial Examiner Norwood: Go ahead.

Mr. Stewart: —what the record shows.

Commission's Exhibit 39-A is that at a meeting in Buffalo, N. Y., of the Conduit Committee this statement appears in the minutes—

Mr. MacIntyre: Now, before reading here, I ask this, that the witness withdraw from the room if you are going to go into a complete discussion of what the record shows on this particular instance. I think the witness has a fairly good recollection of it, anyway. But we are in a proposition here that I think is leading up to an end point that most certainly is not called for.

Mr. Stewart: I don't understand that Mr. MacIntyre is entitled to entrap the witness by putting into his 2384 questions facts that are not in the record.

You are assuming facts that are not in the record, and I say the witness has a right to know it, and the Examiner has a right to know it.

Mr. MacIntyre: I have not told the witness that these are in the record.

Trial Examiner Norwood: Well, I will caution the counsel not to give anything that might be a suggestion.

Go ahead.

Mr. Stewart: All I want to point out to you is this: The record shows that there was a recommendation that the conduit manufacturers consider the advisability of selling conduit on a consignment basis. There is nothing in the record about the action at Buffalo or Hot Springs or anywhere else with reference to a contract, and there is no connection between this and the Blake form of contract, in any event. So I am saying that the question assumes a state of facts not of record; and, morever, I am in hearty accord with Your Honor's point of view that it is time to stop it, because it seems to me that we are not accomplish-

ing anything, because suppose Mr. Quinn gives an opinion about these hypothetical facts, of what consequence is it? He is not deciding the case.

Mr. MacIntyre: That is what I argued yesterday.

Trial Examiner Norwood: Well, your question
2385 does not say, "Did you consider this state of facts, or did you consider that you knew about that when you said that Respondents did not make an agreement?"

Mr. MacIntyre: That is right.

Trial Examiner Norwood: Now, you can put that in, but this long hypothetical question, it sounds as if you are asking him for the verdict.

Mr. MacIntyre: That is exactly what I argued yesterday, because when he was asked as to whether or not there was an agreement, there is only one way to determine what he means by that, and that is to present the facts that are in the record, all those facts that I have assumed in that question that are in issue, and lead up to the conclusion as to whether or not there is an agreement.

Trial Examiner Norwood: What I am getting at is you should direct your question to the matter of his understanding of that word, and what he intended to comprehend in it.

Mr. Austin: If Your Honor please, as I understand it, Mr. MacIntyre has a perfect right to ask hypothetical questions on cross-examination to determine Major Quinn's understanding and interpretation of a word. Further than that, as I understand it, he has a perfect right to ask hypothetical questions with facts in them which vary or differ from the facts in the record. He does not have to have his hypothetical question go along with the record. How-
2386 ever, what I object to in this question is that Mr. MacIntyre immediately prior to it has stated for the record that Mr. Stewart asked questions on this point yesterday.

Mr. MacIntyre: On the point. I did not say he asked about this particular situation.

Trial Examiner Norwood: Wait a minute.

Mr. Austin: This assumes a set of facts.

Mr. MacIntyre: That is right.

Mr. Austin: Now, the only inference to be drawn from the conjunction of those two statements is that the facts he assumes are the facts in the record. The facts that he assumes, in spite of his vehemence here this morning, are not the facts in the record.

Mr. MacIntyre: Well, the courts will have to decide that.

Mr. Austin: I think it is absolutely unfair to put the question that way. If he wants to say "Major Quinn, I am assuming a hypothetical state of facts which are not the facts in the record, but I would like your interpretation of it," let him go to town. I don't care how far he goes.

Trial Examiner Norwood: Well, I don't think he has to approach it in just that way, but I am going to sustain the objection to the question in its present form and ask the counsel to direct his questions to this witness' understanding, not whether he has reached from the evidence a
2387 certain conclusion, and this, that, and the other. Just state it that way.

Mr. MacIntyre: And what is the last part of the question?

Trial Examiner Norwood: When he testified to the absence of agreement or collusion he had in mind certain situations here which you have suggested.

Go ahead.

By Mr. MacIntyre:

Q. Major Quinn, taking that last set of assumptions that I made there, and considering those, would you from those arrive at an understanding that they show an agreement, understanding or meeting of the minds on the part of those involved in that question?

Mr. Stewart: I object to that for the reason heretofore submitted. I submit it is directly within the ruling of the Examiner when he sustained the objection to the former question. It is the same question a little more dressed up.

Trial Examiner Norwood: Well, do you understand that that set of circumstances would amount to an agreement, collusion, or understanding?

The Witness: Well, I would have to hear it again.

Trial Examiner Norwood: Read it again.

(Question read as follows:

"Major, assume that representatives of wholesalers
2388 or jobbers made requests to representatives of manufacturers who were members of the Rigid Steel Conduit Association that they adopt more uniformity in their methods of handling stocks of conduit in the hands of the wholesalers or jobbers and specifically requested that a consignment stock agreement form be adopted for execution between manufacturers and the wholesalers or jobbers,

and that subsequent to the receiving of such requests these representatives or members of the Rigid Steel Conduit Association employed Respondent Herbert F. Blake and discussed the matter with him, and that as a result of that discussion he submitted to them in a meeting a form of a consignment stock agreement that was in accord with the requests made by the wholesalers or jobbers, and that a number of the manufacturers immediately thereafter, or shortly thereafter, began the use of the form which was suggested by Mr. Blake.

"To your mind does that present to you evidence of an understanding, agreement, or meeting of the minds of the persons involved?")

A. It does not.

2389 By Mr. MacIntyre:

Q. During Monday morning you, in response to certain questions of Mr. Stewart, told him about a boom—

Mr. Stewart: A boo?

Mr. MacIntyre: Boom.

Q. —that was—

Mr. Stewart: Business boom.

Q. —going on, and about its decline during the latter part of 1937.

Do you recall that, Major?

A. Yes, sir.

Q. Please state for the record all that you know about what caused the boom to start.

A. Do you want to know what I recall, or what I—

Mr. Stewart: That is what you have to give.

A. As I recall, there was a tremendous Government program which had followed the 1936 election, and many of these programs apparently had been put out before the public—I am talking about my thoughts now; not in actual fact—merely to influence the public in the 1936 election. Along in 1937 some high officials of the United States Government, in a slang expression, told business that the honeymoon was over. (Laughter.)

Now, that is what I know.

Q. You don't know anything else about what
2390 caused the boom to start or what caused it to stop?

A. No, I do not, Mr. MacIntyre.

Q. Do you think that the actions—

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.
Had you completed your answer there?
Mr. MacIntyre: What is the question?
(Question read.)

By Mr. MacIntyre:

Q. —which you have just made reference to caused the boom to start?

A. That I made reference? Yes, I do.

Q. And did it cause the boom to start by creating a demand for different commodities?

A. I can only refer to the effect on our own commodity. It did—it did cause an increase in the demand of the product that we manufactured.

Q. That is, rigid steel conduit?

A. That is right.

Q. And you consider that the withdrawal before the close of that year of all of this support in the form of public money for the buying of commodities for use in different projects caused a decline in the boom in the sales of rigid steel conduit?

2391 A. I do think so.

Q. Is it then your judgment, based on your experience and knowledge, that the amount of conduit that you are able to sell at any particular time depends upon the amount of money available to buy it or offered for it?

A. I don't think you really mean that question the way you have put it, because obviously we can't sell conduit unless there is money available to buy it, whether it is private or public.

Q. Well, will you please answer my question?

The Witness: Well, will you read the question?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Stewart: (Soto voce.) I should think so.

A. I have answered the question.

Trial Examiner Norwood: What was the answer? Read the answer.

(Answer read.)

By Mr. MacIntyre:

Q. Is it then your testimony, Major, that the number of tons that you are able to sell at any given time depends upon the total number of dollars that are available to buy it?

A. The amount that we are able to sell at any time?
Q. Yes.
A. Is solely dependent on money?
2392 Q. Yes.
A. Certainly not.
Q. What is it dependent upon if it is not dependent upon the amount of money that is available to buy?
A. You first—you first—in an ordinary building program you determine how much money you have got to do—to complete a building, and then that creates a demand and the demand is subsequent to the allocation or the application of funds to certain things. It isn't—there might be—there might be billions in the insurance companies in this country unemployed and it would not create a demand for one ton of conduit.
Q. I am talking about being made available for the purchase of conduit and allocated for the purpose of purchasing conduit.
Mr. Stewart: I am sorry. I lost track of it. Let us start back—
Mr. MacIntyre: Well, let me rephrase the question.
Mr. Stewart: That is all right.
Mr. MacIntyre: I will ask a new question.

By Mr. MacIntyre:

Q. Is it your testimony now, Major, that the total number of tons of conduit you are able to sell at any given time depends upon the total number of dollars that are made available by those who desire to purchase conduit for the purpose of conduit—for the purchase of conduit?
2393 A. Certainly.
Q. And if your price advances higher at the time that you are offering that conduit than it was previously, the purchaser gets a fewer number of tons for the total number of dollars offered; is that correct?
Mr. Stewart: I am sorry. I want the question read. Just one word there I didn't catch.
Trial Examiner Norwood: Read it.
(Question read.)
Mr. Stewart: If your price advances higher, you say?
The Witness: His question is all right, Denning.
Mr. Stewart: All right.
A. Assuming that the amount available for the erection of buildings is not flexible, assuming that there is

only so much that can be expended in the erection of a building and the price of conduit advances, obviously you cannot get as much conduit for—at a higher price as you could at a lower price.

By Mr. MacIntyre:

Q. And would that reflect itself in the amount of conduit that you are able to sell for use on such projects?

A. It has never done it in the past, to my knowledge.

Trial Examiner Norwood: Would it have anything to do with the demand?

2394 The Witness: It has never—to my knowledge, it has never affected it.

By Mr. MacIntyre:

Q. To your knowledge, then, has it been that the amount of money available for the purchase of conduit is leveled off and hasn't gone up or gone down over the past 10 years?

A. It is impossible for me to testify how much has been—how much has been allocated for the purchase of anything. As I—I would have to be an expert—an expert of experts to be able to go into a thing of that kind.

Q. How was it you were able to tell Mr. Stewart yesterday afternoon, then, that if you increased your price it would not—I mean decreased your price it would not increase the total number of tons you would be able to sell, if you didn't know how much money was available for conduit?

A. I went further in the answer to that question. I said that my experience was we had never been able to create a false demand for conduit.

Q. Do you recall—

A. And that demand is the actual buildings that are under way.

Q. And do you recall that you went still further than that and said that if you decreased the price you could not sell more conduit?

Mr. Stewart: I submit that that is not what he 2395 said.

Mr. MacIntyre: I submit that it is what he said, and the record so shows, over my objection.

Trial Examiner Norwood: The witness answered—he asked the witness if he recalled having said that. The witness may answer that question.

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Mr. Stewart: No, sir. I think the form of the question is—

Trial Examiner Norwood: Read it.

Mr. Stewart: —that that is what he did say.

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Stewart: The question is, "Now do you recall saying that?" I am sorry. I beg your pardon.

A. My recollection of my testimony is that my experience was that neither an advance nor a decline affected in any way the amount of conduit we manufactured and sold. That is what I recall as my testimony.

Trial Examiner Norwood: The demand for conduit pipes is inelastic, you say?

The Witness: That is what I would say, yes. It is inelastic to the extent it can only be used in certain places. Now, if you are building that type of construction, then there is a demand and it makes no material difference, the price.

2396 Trial Examiner Norwood: Well, couldn't an architect use more or less conduit—more or less conduit, depending on the price?

The Witness: In speculative buildings, what is ordinarily called the taxpayer type, which are put up for merely a year or two simply to carry the taxes until some permanent improvement, that would be—that would be present, but in the erection of an ordinary building under ordinary standards, which are covered in large cities by the municipal codes, the—I don't think—my own judgment is it would make no difference in the amount of conduit involved in that building, regardless of the price.

By Mr. MacIntyre:

Q. And what percentage of the total building, in terms of dollars, would you say is involved in this speculative or taxpayers type—

A. I haven't the slightest idea.

Q. —out of the total?

A. I haven't the slightest idea. It would be comparatively small, but I haven't the slightest idea. Your Dodge reports would show.

Q. You can't tell us what percentage it is?

A. No, I can't. I haven't the slightest idea.

Q. Do you recall, Major, that during the course of

your examination Monday morning that you testi-
2397 tified that flexible conduit, a sample of which is in evidence here as Respondents' Exhibit 26—

A. I testified was armored cable.

Q. Well, armored cable; yes.

—is in competition with rigid steel conduit?

A. I believe my testimony was, only to a very limited degree.

Q. Well, to what degree, now, is it in competition?

A. In—in the building of—of small buildings, of residences and like that, where the amount involved would be very small, somebody might elect to save $5 or $6 and put this in.

Mr. Stewart: This is Exhibit—

The Witness: This is armored cable.

Mr. Stewart: But this is exhibit what?

The Witness: What I attempted to state was that this was used as extensions from the lines of conduit in buildings, and that is what I attempted to say the primary use of it was, and for the erection of small buildings where there probably was no conduit at all employed.

(Whereupon, at 12:07 o'clock p. m., a recess was taken until 1:45 o'clock p. m. of the same day.)

2398 Afternoon Session.

1:45 P. M.

Trial Examiner Norwood: The hearing will come to order.

L. R. QUINN thereupon resumed the stand and testified further as follows:

Trial Examiner Norwood: Proceed with the examination.

Cross-Examination (Continued) by Mr. MacIntyre.

Q. Major Quinn, I show you Respondents' Exhibit 99-A and 99-B, in which you in writing to Smith and Fetten, New York, on May 24, 1938, stated—that is, you wrote him on May 28, 1938—stated:

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"There was a decided effort at Hot Springs by the New York jobbers to break the market, but it did not succeed."

You mean their effort did not succeed?

A. That is right.

Q. And you learned of that in Hot Springs, did you?

2399 A. I learned of it in talking to my customers at Hot Springs.

Q. And what was the occasion of your visiting your customers in Hot Springs?

A. The same reason that I visit with my customers at any convention, so that I have an opportunity of seeing most of our customers at one time, and it saves me considerable travel, and it is a customary thing to be there to entertain.

Q. And this was a convention of the representatives of the National Electrical Wholesalers Association you were attending in Hot Springs on that occasion?

A. That is correct.

Q. And those representatives told you about this effort on the part of certain New York jobbers which did not succeed?

A. No, my own jobbers told me.

Q. Well, now, who were your jobbers who told you that at that convention of the National Electrical Wholesalers Association?

A. I do not recall now. Somebody must have told me or I would not have written that letter.

Q. Well, you say it was your own jobbers.

A. I have no agents there. My agents do not attend those meetings.

Q. Well, which one of those jobbers told you that?

A. I can't tell you at this time.

2400 Q. Was he or it a member of the National Electrical Wholesalers Association in convention at Hot Springs?

A. That I couldn't answer. I assume he would be a member, because as a rule it is only members that attend those conventions.

Q. Can you say whether or not it was Mr. Drury?

A. Not unless I know whether Mr. Drury was there on that date.

Q. If the record shows that he was at that meeting on that occasion, will you say that it was Mr. Drury who told you of that fact?

A. Not necessarily.

Q. Well, can you say if it was not Mr. Drury who told you of that fact?

A. I am trying to tell you, Mr. MacIntyre, I don't know who did. The fact that I wrote the letter indicates that somebody told me, and it must have come from some of our customers, but I don't know who it was, or the circumstance.

Q. But you know you got it at this convention of the National Electrical Wholesalers Association?

A. I got it at Hot Springs.

Q. At that convention meeting?

A. Not at the convention meeting; in the hotel.

Q. Well, where did the meeting take place?

A. The meetings take place in certain rooms of the hotel.

2401 Q. The same hotel?

A. The same hotel.

Q. You do not know which room you got this information in?

A. I presume right out in the lobby or the bar room (Laughter).

Q. And were you informed at that time how this effort was blocked?

A. I don't recall at all.

Q. You—

A. What was the date of that?

Q. May 28, 1938.

A. The market was very, very weak at that time, not only in New York but all over the country.

Q. But you do not now recall what efforts were expended to block the effort of those jobbers who did want to break the market in New York?

A. I was not a party to any discussion other than with our own—the people that came to me naturally would be my own customers.

Q. You have no recollection now of the methods used to block that effort to break that market?

Mr. Stewart: He did not say they used any efforts to block it.

Mr. MacIntyre: I am talking about what the Major wrote now.

2402 Mr. Stewart: I submit he did not say that in the letter either.

Mr. MacIntyre: The letter is in evidence.
Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Now, I call your attention to Respondents' Exhibit 100-A, in which you in a letter to this Mr. Milton Smith under date of November 29, 1937, told him that you were reporting certain facts to someone, but you did not name the parties to whom you were reporting those facts.
Now, will you please tell us who they are or were (handing document to the witness).
Trial Examiner Norwood: What exhibit number is that?
Mr. MacIntyre: Respondents' Exhibit 100-A.
The Witness: 100-A.
A. No, I haven't the slightest idea, because I don't even identify what parts I reported. I just say certain parts, and I don't—and this is four years ago.

By Mr. MacIntyre:

Q. Your counsel brought that here and put it into evidence as writing of yours. You do not know what it means?
A. I do not know who I reported certain parts of this to. It is not identified.
Q. Is it your testimony that you did not report 2403 that to the officials or other members of the Rigid Steel Conduit Association?
A. Did you say—if you will identify the part that I reported, I will answer the question.
Q. Well, any of the parts to which your letter refers there.
A. My testimony would be that I did not report that to the officials of the Rigid Steel Conduit Association.
Q. How can you say that since you say you do not know to whom you did report?
A. Because we never report facts of that kind to the officials of the Rigid Steel Conduit Association.
Q. Is it your testimony now that you never discussed such matters at any meeting of the Rigid Steel Conduit Association?
A. Only past transactions that could be identified legally.
Q. Parts of this deal with past transactions, Major.
A. Possibly they do.

Mr. MacIntyre, we get those letters constantly from the field. My own thought of what I put on the bottom there is about the same as you get at the end of a radio program. It is a sign-off. I just answered, "Thanks for the letter," and certain parts I reported just in order to stop the correspondence. Now, that is what I would judge that means.

Q. But you can't tell us as to those parts that
2404 relate to past transactions as to whether you did report them to members of the Rigid Steel Conduit Association?

A. I would say that I did not, but I have no direct recollection.

Q. You do not know whether you discussed them with Mr. Booth?

A. To the best of my knowledge and belief, I never discussed transactions of that kind with Mr. Booth.

Q. You did report past transactions to Mr. Booth, though.

A. You mean—speaking about our company?

Q. Yes.

A. I do not recall taking up past transactions with Mr. Booth.

Q. Is it your testimony that you did not report to Mr. Booth, as an employee of the Organization Service Corporation, matters relating to your contracts on which you had quoted and committed yourself as to certain prices?

A. We reported to Mr. Booth concerning our own contracts, but not on anybody else's contract, and that is what that refers to, somebody else's sales.

Q. Is it your testimony that you never passed on to him any information as to any specific job contracts that you learned or felt that somebody else had entered into?

A. I do not believe I ever did.

Q. Well, what is your testimony on it?

2405 A. You asked me and I have given the answer.

Q. You do not have any clear recollection on it, though; is that correct?

A. I can't say definitely I never did. I don't think we did.

Q. Well, who in New York other than Mr. Booth, Mr. Blake, and the officials of the Rigid Steel Conduit Association would you be discussing past transactions on specific job contracts in Atlanta, Ga., and other portions of the United States?

The Witness: You will have to read that.

Trial Examiner Norwood: Read it.

(Question read.)

A. We had nobody in New York that we discussed it with. We naturally discussed it with our own manufacturers' agents.

If you are asking me whether we had a clearing house for passing this information on, I will answer that question definitely: we did not.

By Mr. MacIntyre:

Q. Is it your testimony now, Major Quinn, that when question concerning a specific job contract, which is being handled by your company for the sale of rigid steel conduit through a jobber in Tennessee for use on a T. V. A. project—that you discussed that with your New York manufacturer's agent?

2406 A. No, sir.

Q. Did you ever discuss such thing with your manufacturer's agent in New York?

A. No.

Q. Who else in New York would you have discussed such a thing with?

A. Nobody in New York. If the report came from Tennessee we talked to our agents in Tennessee. If it came from New York, we talked to our agents in New York.

Q. Who else in New York?

A. Who else in New York? I have answered; we didn't discuss it with anybody else in New York.

Q. Major Quinn, I am reading to you now from Respondents' Exhibit 79, a letter to you from Smith and Fetten, under date of August 23, 1940, in which it is stated:

"Jules Hawks called me this morning and wanted to know if we had a price on a bid that Gaffney-Kroese took from the Government on conduit at card 79. Told him our price was card 82. Hawks said Gaffney stated they could get it from National Enameling, Steelduct, Mohawk, and Garland, told him I would vouch that National Enameling was card 82, as was Steelduct, but that I didn't know about Mohawk and Garland. He stated he doubted if Garland could get this much credit. I am just passing this along for what it is worth."

On September 3, 1940, you replied to that: "Thanks 2407 for the above information. We discussed this in New York last week."

Now, with whom did you discuss that?

A. The man that wrote that letter to me. We discussed —he and I discussed that in New York when I was in New York, and then he wrote—he continued. That was a Government bid. Gaffney Kroese cut the price; and a public bid; and then attempted to buy the pipe to supply it, and I was in New York and talking to our own agents, and he asked me whether we wanted any of it, because we occasionally sold Gaffney Kroese, and I told him no.

Now, it is apparent from that letter that somebody called up Mr. Smith—or whoever wrote the letter; I haven't even seen the letter to know who wrote it—and asked him what he had quoted. That letter originated in New York and not in my office, and he is reporting to me the conversation that we had the week before, and when I say "we" I mean I and the gentleman that wrote that letter to myself.

Q. And it is your belief now that he forgot between September 3 and the week before that he had discussed it with you and found it necessary to again tell you about it in a letter and you found it necessary to call it to his attention that you had discussed it one week before?

A. Oh, Mr. MacIntyre, we discussed it a week before in New York, and this is a continuation of the discus-
2408 sion and he discussed it with me.

Q. Well, how is it necessary, then, for you to call it to his attention that you had discussed it the week before?

A. Because I wanted to call it to his attention that we had discussed this bid the week before and I didn't care for any more correspondence on the subject.

Q. Is it your contention now, Major Quinn, that you did not attend a meeting with your competitors in New York the week before?

A. I don't know. I would have to look and see whether there was a meeting the week before, but that was never discussed at any meeting I ever attended, no matter when it was held.

Q. If the record does show that you did attend such a meeting with your competitors in New York the week before, what is your explanation of this statement in your letter of September 3, 1940?

A. Mr. MacIntyre, I testified that the conversation I had was with the man that wrote that letter. Now, it doesn't make any difference where I was or what I attended; that

letter refers to the man that wrote the letter, nobody else, no customer, no competitor, or anybody else. Now, I can't be any more definite than that.

Q. Did he tell you the week before September 3, 1940, that Mr. Hawks of the Triangle Conduit & Cable Company had been talking to him about this matter?

2409 A. I told him the week before that Gaffney Kroese had cut the price and I would like to have him find out who quoted Gaffney Kroese. That is why the letter was written to me of the conversation and what Gaffney Kroese had said where they could buy it.

Q. Did he tell you anything about Hawks the week before September 3, 1940?

A. He did not. The first information I had about Hawks was when he wrote that letter.

Q. So when you did write him on September 3, 1940, you were thanking him for the information and not something that you had discussed with him the week before?

A. That is right.

Q. And you did not have, when you discussed with him the week before, any information that Hawks was inquiring about this job?

A. I did not.

Q. You did have information that the price cut had occurred, though?

A. That is correct.

Q. Now, Major, referring to Respondents' Exhibit 29 and 31, they are the two booklets on industry standards. Do you recall those?

A. Yes.

Q. What, if anything, in building codes of cities,

2410 in Federal Government specifications, in the Underwriters Laboratories' Code of Standards for Rigid Steel Conduit, or anywhere else, is there a specification that condemns your manufacture and sale of conduit in excess of the standards outlined in the Respondents' Exhibit 68?

A. May I ask what you mean by "condemns"? And I can answer your question.

Q. A prohibition or a lack of approval—

A. The Underwriters—

Q. For use.

A. —Laboratories' specifications are the minimum standards The Underwriters Laboratories required only

two one-minute dips in electro-galvanized, and onsheradized. Dr. Lloyd, from his test, of the Bureau of Standards, felt that that wasn't sufficient, and 781-A requires four one-minute dips, and when you bid to the United States Government you absolutely state that your bid—your material will comply with the specifications of that department.

For instance, the Panama Canal have a specification that prohibits all the manufacturers but one to bid on it.

Q. My question, Major, is to the effect: Do you know of any standard set up by any agency, the Federal Government, the municipalities, underwriters, that would interfere with your manufacture and sale for use in any project of conduit that exceeds the specifications?

2411 A. That exceeds the specifications?

Q. Yes.

A. Certainly not.

Q. There is nothing that would hinder you in doing that in so far as standards are concerned, as announced by any governmental body, or by underwriters?

A. I think practically all the conduit that is manufactured in the United States exceeds the specifications of the Federal Government.

Q. There most certainly isn't any hindrance on the part of any of the statements of standards to your exceeding specifications?

A. No.

Mr. Stewart: What was that question?

(Question read.)

Mr. MacIntyre: The answer is "No".

By Mr. MacIntyre:

Q. Now, referring to Respondents' Exhibit 56, you have stated that that is a tabulation of cost of raw pipe?

A. That is correct.

Q. Will you interpret these columns of differences or changes in cost for us? Tell us what it means.

A. Pipe—you notice that I have only quoted the price on half-inch here, because the ordinary pipe card has different prices for half, three-quarters, the base sizes of one

2412 to three, and the lapweld sizes. I think that is correct. You will be able to ask Mr. Barton when he gets on because he sells pipe and I don't. The base price of pipe is $200 a ton, and from that their cards show so many points off, and each point is $2 a ton; and that's what this refers to here on this side.

Q. Is that "p. t. s." points? Is that what you mean by—

A. Yes, points.

Q. Well, now, what is a point?

A. Two dollars a ton.

Q. Two dollars a ton?

A. That is right.

Q. So the advances and the reductions are, in terms of points, and the two and a half points would mean $5?

A. Two and a half points would mean $5.

Q. That is per ton in pipe?

A. That is right.

Q. And on half-inch pipe how many pounds for a hundred feet of raw pipe?

A. 850.

Q. Of raw pipe?

A. What was your question? I don't think I answered that question correctly.

Trial Examiner Norwood: Read it.

(Question read.)

2413 A. My answer is incorrect. It is 85 pounds instead of 850 per hundred feet.

Q. Eighty-five pounds of pipe for a hundred feet?

A. A hundred feet.

Q. The pipe, base pipe, $200?

A. Yes.

Q. So two and a half points advance or reduction in the cost of pipe, raw pipe, would be how much per hundred feet—

A. Well, I will have to—

Q. —difference in the cost of conduit?

A. Would be 4 cents.

Q. Four cents a hundred feet?

A. Yes.

Q. And what is the greatest change that is shown on your tabulation, Respondents' Exhibit 56? Three and a half points isn't it?

A. Well, here is one four points, three and a half, here is one six points, and here is one—

Q. What is the date of that?

A. The six points was March 6, 1936.

Q. And that is a reduction, isn't it?

A. That is a reduction of twelve.

Q. What is the greatest advance at any one time in terms of points?

A. Well, March 5, 1937, there was a five-point
2414 advance, and the elimination of one five.

Q. Now, what does it mean, the elimination of one five?

Mr. Stewart: What do you mean, in dollars and cents what it would mean?

Mr. MacIntyre: No. I am asking him for the term.

A. In the sale of this material you buy it at a certain base price less certain points; then you get so many more points off for plain ends, and then this card might come out, it would have three fives beyond that. That is three five per cents. Then, rather than publish a new card, they may decide as of a certain date they will only give two fives, and they may eliminate all the fives altogether, but still their base card remains the same.

By Mr. MacIntyre:

Q. So on this occasion—in March, was it, of 1936?

A. Yes.

Mr. Stewart: Which one was it? There was one March, 1936, and one March, 1937.

The Witness: The five points, are you talking about?

By Mr. MacIntyre:

Q. The five points of change.

A. That is March, 1937.

Q. Five points of change.

Now, that means, translated into terms of cents per
2415 hundred pounds of half-inch conduit, just this, doesn't it, Major: Taking your figure of 4 cents per hundred pounds for a two and a half point change, that being five, would be 8 cents plus whatever the elimination of 5 percent discount would amount to, the 5 percent being a discount of $200 per ton of pipe?

A. And your question is how much per what?

Mr. MacIntyre: Read the question.

The Witness: Read the question, please.

(Question read.)

Mr. Stewart: That isn't the way it works.

A. Do you still want to ask me how much the increase is per hundred pounds?

By Mr. MacIntyre:

Q. Of half-inch conduit.

A. Half-inch conduit. A hundred pounds?

Q. Yes.

A. Well, if you advance your price—
Q. No. A hundred feet.
A. That is why I asked you to repeat it.
Q. One hundred feet of one-half inch conduit.
(Discussion off the record.)
A. If my figures are correct it would make a difference of 56 cents a hundred feet.
Q. Each two and a half point change in the price
2416 of raw pipe, one-half inch raw pipe, makes a difference of 8 cents a hundred pounds—
A. My answer was incorrect on that 4½ cents. I will figure it.
Two and a half points would make a difference of 21.2 cents.
Q. Making approximately a half a dollar for the five points change?
A. Yes.
Q. And that is the biggest advance you had at any one time; is that correct?
A. That is right. Five points plus 5 percent.
Q. Yes.
Now, what is the date of the last change that you show in the price of raw pipe on your tabulation?
A. July 1, 1938. May 1, 1941, is the last one.
Q. In other words, the price that is indicated on your tabulation for July, 1938, remained in effect until May, 1941?
A. No. There was a change in October 1, 1938, and another change—
Q. That is shown on your tabulation?
A. Shown here on the tabulation.
Q. What is the date of the last one shown on the tabulation?
A. May 1, 1941.
2417 Q. So, from October, 1938, to May, 1941, there was no change in the price of raw pipe.
Mr. Stewart: He did not say that.
Q. Is that correct?
A. That is correct.
Q. What portion of the total cost of a hundred feet of rigid steel conduit is the raw pipe today?
A. Today?
Q. Yes. Well, January 1, 1941.
A. Approximately 60 percent.

Q. Sixty percent.

And what portion of the total cost of the hundred feet one-half inch conduit is the labor?

A. It would be in the neighborhood of $11 a ton.

Q. And in terms of 100 feet conduit is how much?

A. Well, there is 2250 feet per ton. You want it per hundred feet?

Q. Yes.

A. (After figuring.) It would be 51 cents a hundred feet.

Q. Fifty-one cents per 100 feet.

And how much was the raw pipe, did you say?

A. Sixty per cent.

Q. And in terms of percentage, how much is this 51 cents?

A. In terms of percentage?

Q. Yes, as of January 1, 1941.

2418 Mr. Stewart: You are asking what the labor rates were as of January 1, 1941?

Mr. MacIntyre: No. No.

A. Black or galvanized?

By Mr. MacIntyre:

Q. Put it on black.

Q. You mean our selling price to our customers?

Q. I want the total cost of the conduit when it is completed, including everything that you do to it to deliver it to your customer.

A. You want to know what percentage the labor is.

Q. Yes.

A. (After figuring.) Approximately 12 percent.

Q. And what percentage is management and administrative of that total cost?

A. Just what do you consider administrative? Just officers' salaries or your entire office force?

Q. The entire office force including officers and general managers.

A. As of what date?

Q. January 1, 1941.

A. January 1, 1941.

Administrative and office expense would be in the neighborhood of 3½ percent.

Q. And what percent of the total is the sales expense?

2419 A. Five percent.

Q. Five.

Now, Major, coming back to this Respondents' Exhibit 68, which is Underwriters Standard Specifications, I believe you testified on Monday morning that in so far as they had been incorporated and re-expressed in Respondents' Exhibits 29 and 31, the industry standard statements, it was merely a matter of explaining rather than requiring that you meet these standards because you were not required to meet any standard; you could do whatever you pleased, but it might interfere with your putting your product on particular jobs if you did meet the standards. Is that correct?

A. That is not what I recall my testimony was. What I said was that the Underwriters Laboratories' standards were the minimum standards. These industry standards were brought out to explain the underwriters' standards and to show what our standards were for the benefit of architects and engineers, and I later told you that they were all submitted to Dr. Lloyd of the Bureau of Standards, and I can't definitely state he personally approved them for the Government, but he personally approved them.

Q. But the standards, even those expressed in Respondents' Exhibit 68, you do not necessarily have to meet, except where certain cities have adopted the underwriters' standards as their minimum standards for their build-

2420 ing codes. Is that correct?

A. Any place that insurance is not carried, then you could manufacture anything that you wanted to; but any place that insurance is carried, by mutual or underwriting firms, it would have to meet the underwriters' standards before it could be installed.

Q. But where such insurance is not carried as would require rigid steel conduit to be installed of the standards specified in Respondents' Exhibit 68, then you could put in rigid steel conduit of any lesser standard?

A. Oh, yes; that is correct.

Mr. Stewart: I don't know whether he means that question. Do you?

Let me have the question.

Trial Examiner Norwood: Does the counsel object to it?

Read it.

(Question read.)

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. And you could even put in armored cable, such as Respondents' Exhibit 26?

A. Under the same classification?

Q. Yes.

A. Yes.

2421 Q. Or—

A. They probably would put in knobbing tubing.

Q. You could also put in the so-called e. m. t., Respondents' Exhibit 27?

A. Now, you are still excluding the municipalities that have codes? Because even if you had insurance or not you could not put material into a city that had a municipal code of less than their municipal code, regardless of whether you carried insurance or not.

Q. Yes, but taking—

A. If you have no code—

Q. Taking a job such as the Tennessee Valley job, Norris Dam, and around, you could use anything that they would specify, irrespective of standards set out in Respondents' Exhibit 68 or 29 or 31. Is that correct?

A. Well, subject to correction. It has always been my understanding that the standards as prepared by the Government 771 for enameled and 781-A for galvanized was part of every inquiry in the Government, and anything you sold to the Government had to meet those specifications.

Q. That is, in buying rigid steel conduit.

A. In buying rigid steel conduit.

Q. But if they so desired to buy and use, they could buy electric metallic tubing, such as is evidenced by Respondents' Exhibit 27, and install it?

2422 A. If they cared to.

Q. Irrespective of the standards specified in Respondents' Exhibits 68, 29, or 31?

Mr. Stewart: Well, now, I submit, if Your Honor please, that that is argumentative.

Q. Is that correct, Major?

A. As I understand your question, it is this, that if the United States Government, or any of its divisions, decides that they want to buy e.m.t. for any project they are building, and they send out an inquiry for e.m.t., they can buy e.m.t. and install it.

Q. And that is irrespective of any standards set up in the specifications, in respondents' Exhibits 68, 29, or 31?

Mr. Stewart: Now, I object on the ground that e.m.t. not being rigid steel conduit, obviously would have nothing to do with the specifications. Rigid steel conduit could not have anything to do with e.m.t.

Trial Examiner Norwood: Objection overruled.

The Witness: Would you read the question again?

(Question read.)

The Witness: What is the question?

By Mr. MacIntyre:

Q. You had already said that they could buy anything on any job.

Trial Examiner Norwood: In relation to the 2423 standards here, which are disregarded.

The Witness: Well, Mr. Norwood, I can't get what Mr. MacIntyre is driving at. What have those standards got to do with armored cable?

Trial Examiner Norwood: He means those standards notwithstanding, could they get that if it was not specified?

The Witness: The United States Government can buy anything they want to and under any conditions.

By Mr. MacIntyre:

Q. And install it wherever they please irrespective of the standards specified in Respondents' Exhibit 68 and Respondents' Exhibits 29 and 31; is that correct?

A. Yes, sir.

Q. Now, I again call your attention to Respondents' Exhibits 27, 24, and 25.

Now, Major, assuming that the prices on conduit, such as Respondents' Exhibits 24 and 25, were approximately as low as the price in effect on thin walled conduit, such as is evidenced by Respondents' Exhibit 27, is it your judgment and experience from your operations in the business that the Government, or any other purchaser, would fail to buy the rigid steel conduit instead of the thin walled conduit?

Mr. Stewart: Just a minute. I would like to have that question read.

Trial Examiner Norwood: Read it.

2424 (Question read.)

A. Well, based on my operations of the business, there has never been a time when the price of this approximated the price of that, so I can't give you—

Mr. Stewart: Which is which?

The Witness: This is the cheapest.

Mr. Stewart: Which exhibit?

The Witness: This is e.m.t., Exhibit No. 27. 24 and 25 are rigid steel conduit.

There has never been a time when the price approximated.

I can give you a problematical answer, only I thought you did not want speculative testimony. But I can give it to you if you want it.

By Mr. MacIntyre:

Q. I objected to it before, but I would like for you to give it now.

A. Well, any man who would buy this—

Mr. Stewart: When you say "this"—

The Witness: Anybody who would buy e.m.t. at the same price as conduit needs a psychiatrist.

By Mr. MacIntyre:

Q. Well, would he do it?

A. Certainly not.

Q. You would buy conduit in preference to that if 2425 they were the same price, or nearly the same?

A. Why, certainly.

Q. Your answer is based on your experience in the industry over many years?

A. Yes, sir.

Q. Would your answer be the same if you were talking about armored cable instead of thin walled conduit?

A. Well, I am not qualified to speak for armored cable. We have never manufactured it. We have never sold it. The real competition to e.m.t. is not present as an exhibit. Flexible steel tubing is the competition to electrical metallic tubing, not armored cable.

Q. Is it your testimony that armored cable is any more or any less safe as an electrical raceway than merchant pipe in the raw?

(Laughter.)

Trial Examiner Norwood: Read it.

The Witness: I can answer that question.

Mr. Stewart: Go ahead.

Trial Examiner Norwood: Read the question.

Wait a minute.

Read the question.
(Question read.)
Trial Examiner Norwood: Answer it.
A. It is less safe than merchant pipe in the raw.

2426 By Mr. MacIntyre:

Q. Then, as a matter of safety, is it your testimony that merchant pipe could be used as electrical raceways in all jobs where armored cable could be used?
A. Is it my testimony?
Q. Yes.
A. Based on my years of experience, merchant pipe should not be used in place for a metallic raceway.
Q. I do not believe you answered the question.
The Witness: Will you read it please.
Trial Examiner Norwood: Read it.
(Question read.)
A. As a matter of safety? Yes, it could be used as a matter of safety.

By Mr. MacIntyre:

Q. And as a matter of safety, it can be used wherever rigid steel conduit—
A. It cannot.
Q. —can be used?
A. You are talking about armored cable or merchant pipe?
Q. Talking about merchant pipe first.
A. Merchant pipe cannot be used with the same degree of safety.
Q. And what is the difference in safety for the first year as between the two?
2427 A. For the first year?
Q. Yes.
A. The matter of years is not the dominating factor. Merchant pipe is a common ordinary product. It is used for plumbing and other things that the interior makes no difference how rough it is, whether there are obstructions in it—
Q. Well, what do you do to merchant pipe when you fabricate it into rigid steel conduit that makes it any more safe to use than merchant pipe as an electrical raceway for the first year of its use?
A. In the first place, we have an enameled raceway, and

in the placing of that enameled raceway the pipe is inspected before and after.

As a matter of education, Mr. MacIntyre, the majority of the merchant pipe today is made on the continuous weld process up to certain sizes, and that material comes in in coils—that is the skelp—comes in coils. At the end of each coil these ends have to be buttwelded together. The pipe manufacturers attempt to see that none of that foreign material gets into the trade. But even with all of that care we get many pieces into our plant that the entire center section, interior section, is closed.

As a matter of fact, the underwriters' ruling—the National Electrical Code ruling is that 60 percent of the interior of your pipe must be air space, and that is done
2428 to avoid any friction or abrasions to wire, and the overheating by the overloading. The average layman will put on a line in his house for two lamps, and then his wife will buy seven more, and the first thing you know it becomes overheated and starts a fire.

Now, if you took merchant pipe with a great many imperfections—I think when Mr. Barton testifies he could testify to this because he is a pipe manufacturer.

Q. Well, do these labels that the Underwriters Laboratories authorize to be put on pipe, that is, rigid steel conduit, certifying that it meets their standards, or standard specifications, does it mean anything other than that it meets certain standards as to safety?

A. That is all.

Q. Nothing else?

A. Nothing else.

I would like to add that there are other hazards that come under an insurance policy besides safety that the underwriters attempt to protect. It is the hazards for which the owners of the Underwriters Laboratories are called upon to protect. The principal, however, the principal one, the principal consideration is safety.

Q. Well, is there any other problem that is handled through the application of those labels than the problem of safety?

A. Why—you mean in the case of conduit?

2429 Q. Yes.

A. Why, there are other hazards besides safety. You have the hazards of grounding—

Q. Isn't that one for safety?

A. Isn't that one for safety? For safety and fire hazard.

Q. That is safety, isn't it, against fire or injury?

A. If your definition of safety is any damage that might be done, then safety would cover all of the requirements.

Q. But as to the wearing qualities, durability, the underwriters' label does not touch that at all?

A. It does not.

Q. You told Mr. Stewart that sometimes Clayton Mark & Company manufactures conduit. When was the last time they manufactured any conduit?

A. I am not competent to answer that. I do not believe they manufactured any conduit since they cut the street through their old building and they moved out to Evanston. I would say it was probably four or five years ago.

Now, I believe Mr. Hula has already testified, and I think you have it as a matter of record. That would be my guess, about five years.

Q. That they moved out to where they are now?

A. Yes.

Q. But you do not know what year they discontinued the manufacture of conduit?

2430 A. I do not.

Mr. MacIntyre, I would like to add one thought to the previous question, about the wearing qualities and the Underwriters Laboratories that you asked me. The Underwriters Laboratories' requirement for the protective coating on the outside, while it is a safety factor, it also has a very distinct bearing on the life of the product.

By Mr. MacIntyre:

Q. Major Quinn, Respondents' Exhibit 32-A to C is your tabulation of conduit produced. It shows by each month the volume produced over a period of years. Do you recall that?

A. Yes, sir.

Q. Would you say that that also represents by those figures the amounts of each type of conduit that were sold during those months?

A. It does. That is, if you limit the types to black and white.

Q. Yes.

A. It doesn't divide up the different types of white, but it shows the difference between black and white.

Q. Yes. But as to those it shows the total sold—
2431 A. Yes, sir.
Q. —during each month for that period?
A. That is right.
Q. Now, you told Mr. Stewart on Monday what percentage of conduit, that is, of your production that you sell and ship to New York, to Chicago, and to Buffalo, and to the South and to the Mid-west, but you didn't tell him how much you sell and ship to New York—I mean to Philadelphia.
A. I—
Q. Will you tell us that now.
A. We—you want to know actually what we sell in Philadelphia?
Q. Well, the percentage of your total that you think—
A. Less than one percent.
Q. You think it would run less than one percent?
A. Less than one percent.
Q. What percentage to Baltimore.
A. Baltimore and Washington—and that comes under one agency, and that is the only way I divide them, is by the agent's territory.
Baltimore and Washington would run approximately 5 percent.
Q. Well, what percentage to St. Louis?
A. St. Louis is in the Central West.
Q. It would take a part of that 25 percent you told
2432 us about?
A. That is right. I can hazard a guess if you would like to know it as a matter of information.
Q. No, that will be all right if it is included in there.
You also told Mr. Stewart that one of the reasons why the Rigid Steel Conduit Association was formed was because of the desire of the manufacturers to get out from under the jurisdiction of NEMA, that is, the National Electrical Manufacturers Association. Do you recall that?
A. That is correct.
Q. Didn't you remain under the jurisdiction of NEMA for some purposes such as price filing and the like for a considerable time after the formation of the Rigid Steel Conduit Association?
A. I think not. We were the Rigid Conduit Section of NEMA, and my recollection is that the Rigid Steel Conduit Association was not formed until after we withdrew from NEMA.

Q. That is true, but after the Rigid Steel Conduit Association was formed, which, I believe, was in April, 19—

Mr. Stewart: '34.

Q. —'34, you still filed prices—

A. Only—only—

Q. —with the roughing-in classification section of NEMA; is that correct?

A. Only so long as we were required to do so by the N. R. A.

2433 Q. But that was for several months, though, after the formation of the Rigid Steel Conduit Association?

A. Yes, that is correct.

Q. So, to that extent, you remained under the jurisdiction of NEMA; is that correct?

Mr. Stewart: I submit, now, that that is argumentative.

Trial Examiner Norwood: I don't think so.

Mr. Stewart: Well, as I understand it—I don't want to press the point—but, as I understand it, what the witness has said is that they filed in accordance with the provisions of the N. R. A. Code. Now, the question, then, would be as to what the effect of that would be, as to whether that is under NEMA or under the National Recovery Administration.

Mr. MacIntyre: Well, the record shows, though, that this roughing-in classification section of NEMA handled the price filing for the rigid steel conduit manufacturers during that period of time. The record already shows that, Mr. Stewart.

Mr. Stewart: I understand that, but whether that is under NEMA or under the N. R. A. is another matter.

Mr. MacIntyre: Well, if NEMA was handling it that goes to my point.

Trial Examiner Norwood: Off the record.

2434 (Discussion off the record.)

Mr. Stewart: I object, then, on the ground that the question assumes a state of facts that is not in the record, and it is not proper cross-examination.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled. Go ahead.

A. If—if you call the filing of price cards under the control of NEMA, to that extent we were under the control of NEMA. That was the limit of their activities, was the N. R. A. provisions.

By Mr. MacIntyre:

Q. That is, the handling of the code for the conduit manufacturers?

A. No. The conduit manufacturers did not have a code of their own. They operated under the Electrical Code.

Q. That is, under a section of the Electrical Code which dealt with roughing-in classifications, which included conduit?

A. That is right.

Q. You told Mr. Stewart the services of the Organization Service Corporation were retained by manufacturers of rigid steel conduit because of the passage of the Robinson-Patman Act. What did you and other manufacturers—

2435 Mr. Stewart: I—just a moment, please.

All right. Go ahead. Finish your question. I am sorry.

Mr. MacIntyre: Go ahead.

Mr. Stewart: Go ahead. Ask your question. I don't know what your question is.

By Mr. MacIntyre:

Q. What were you and the other manufacturers of rigid steel conduit doing at that time that led you to believe that you were probably discriminating in price or possibly discriminating in price in violation of that Act?

Mr. Stewart: I object to that on the ground that the question assumes a state of facts that is not correct. Mr. Quinn did not tell me that that was the reason. He said it was one of the reasons, as I recall the record.

Mr. MacIntyre: Well, I will amend that question, then, to read that "You stated it was one of the reasons."

Mr. Stewart: All right.

By Mr. MacIntyre:

Q. Now, will you answer the question, as amended.

A. Now, will you read it to me, please?

Trial Examiner Norwood: Read it.

(Question, as amended, read.)

Mr. Stewart: Do you understand the question?

2436 The Witness: I think I do.

A. I can't answer what anybody else did, but, as our counsel advised us at the time of the passage of that law, that any time we sold two concerns in the same town or concerns in adjacent cities—at different discounts, we

were violating the Robinson-Patman law, and there was a number of other provisions of the Robinson-Patman law that was very disturbing to our company. Whether they disturbed the others, I can only speak for my company.

By Mr. MacIntyre:

Q. So, after you got this advice from your counsel to which you have just referred, you felt, then, that it was necessary for you and your competitors to hire Mr. Blake and the Organization Service Corporation to tell you when you were charging one of your customers more than you were the others; is that correct?

A. That wasn't my testimony, Mr. MacIntyre, at all.

Q. Well, why did you hire Mr. Blake, then?

A. If I recall my testimony correctly, I said that that was one of the reasons that any association needed some central office through which statistical information could be cleared, and that was impossible between one manufacturer and another. This is one of the services that they rendered.

Mr. Stewart: You are referring to what, to Exhibit what?

2437 The Witness: Exhibit 32-A, the tonnages.

Trial Examiner Norwood: That is Commission's exhibit or Respondents' exhibit?

The Witness: This is the Respondents'.

By Mr. MacIntyre:

Q. How did anything that is contained in Respondents' Exhibit 32-A to C inform you whether or not you were complying with the Robinson-Patman Act?

A. I have just testified, Mr. MacIntyre, that this is an additional service that we needed an agency for.

Q. You felt, after your own counsel had advised you concerning the Robinson-Patman Act, that you still wanted other advice concerning it from Mr. Blake; is that correct?

A. I did.

Q. And you considered that you could get that best by employing him in combination with your competitors to run your trade association; is that correct?

Mr. Stewart: Now,—now, just a moment. Are you stating that to be the facts of record, or are you just asking that as a question?

Mr. MacIntyre: I am asking that as a question.

Trial Examiner Norwood: The question speaks for itself.

Do you want it read?

The Witness: Please read it.

2438 (Question read.)

A. That is correct, because the Organization—the Organization Service, as it was explained to me as one of the officers of the Enameled Metals, had a number of diffirent trade associations in their office. They—they were constantly in contact with the various bureaus here in Washington. They were constantly examining and reporting on decisions of the Supreme Court. It has been increasingly difficult for a manufacturer in the last nine years to do business because of the many changes in the matter of ordinary law, and, frankly, we sometimes don't understand whether we are operating or not.

By Mr. MacIntyre:

Q. If you look at it that way, Major, why is it that you and your competitors dropped the services of Mr. Blake during the middle part of 1938 or the early part of 1939?

A. Because we couldn't afford to continue them.

Q. What change in the conditions in 1939 made you less able to carry Mr. Blake than the conditions of the early part of 1938?

A. I have already testified that Mr. Blake's services practically, or actually, ended about November, 1938. He continued on for some three or four months—I first testified $250, and which was later corrected—for two or three months at $300, whereas his former remuneration had been something in the neighborhood of $1,500 a month.

2439 Q. Isn't it a fact, Major—

Mr. Stewart: Wait. Let him finish the answer.

Mr. MacIntyre: I thought he had finished. Pardon me.

A. (Continuing.) And 1938—in 1938—in 1937 there was 139,000 tons of conduit produced. In 1938 there was 95,000 tons of conduit produced; in the—in the first two or three months of 1939 there was something in the neighborhood of an average of about 8,700 tons a month, whereas by September, October, November, the average was about 15.000 tons a month.

By Mr. MacIntyre:

Q. But the Respondents' Exhibit 2 will show how your production—

A. Yes.

Q. —increased by—was going on up by the beginning of 1939, doesn't it, and continued?

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A. In December—no, not the beginning.

Q. Well, at least was higher, then, than it was during the middle and the first half of 1938?

A. That is correct. Slightly different—slightly more.

Q. Now, isn't it a fact, Major, that you and the others in the Rigid Steel Conduit Association had said nothing about dispensing with the services of Mr. Blake or the Organization Service Corporation until after the Federal Trade Commission investigation by Mr. Frascati at
2440 the time he went to their offices in New York?

A. Of course, I never met Mr. Frascati, and all I know of his investigation in New York was purely hearsay. I have been told that he investigated their office in New York.

Q. Well, prior to the time—

Trial Examiner Norwood: Wait a minute. Wait a minute. He asked you about this time.

The Witness: He asked me—

Trial Examiner Norwood: The question went to the time.

A. I can't answer the question because I have no first hand knowledge of Mr. Frascati's investigation.

By Mr. MacIntyre:

Q. Well, the record shows that he visited Mr. Blake during May, 1938.

A. As far as our company is concerned, any investigation by the Federal Trade Commission either before or after would not have changed our opinion of the hiring or relieving—relieving the Association of the services of Mr. Blake. If we could have afforded to go along and maintained, we would have continued his services had he desired to continue with us—and I am still speaking for our company only. We would have continued his services as long as he would continue to serve us.

Q. But it is a fact that you made no move to discontinue his services until after May, 1938?

2441 A. Well, I—I am not quite sure whether we let him—whether we let him go or whether he let us go. I am more under the impression that Mr. Blake retired from us. At least, I remember distinctly of his turning in his resignation and my accepting it.

Q. We have those in evidence here?

A. Yes.

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Q. And it is also a fact that you did not close up the offices of the Rigid Steel Conduit Association at 17—East Forty-second, isn't it?

A. Yes.

Q. Forty-second Street, New York, until after Mr. Williams followed Mr. Frascati in investigating its affairs; is that correct?

A. Mr. Williams, I think, was in Pittsburgh in 1939; is that correct?

Mr. Stewart: 1940.

Q. You didn't close the offices of the Association until after that?

A. But it had nothing to do with Mr. Williams' investigation?

Q. But I am asking you if that isn't a fact.

A. No. The office was closed a year after Mr. Williams visited us.

Q. Now, this question of the elimination of black—
2442 that is, the enameled conduit—would have resulted in the total price paid by the purchaser for a foot of conduit being higher than if it had not been eliminated?

A. That is correct.

Q. Now, in your discussion with Mr. Stewart about your adoption of a consigned stock agreement form, you told him that you had one for many years prior to that.

A. That's right.

Q. But you did not, prior to the time that Mr. Blake recommended a form to you, have any form that carried the precise wording of his; did you?

A. The precise wording?

Q. Yes.

A. We did not.

Q. You told Mr. Stewart in that connection that you adopted this form to protect markets? Do you recall that statement?

A. I—

Mr. Stewart: I object to that on the ground that that is not a correct statement of the witness' testimony.

Mr. MacIntyre: I submit that it is.

Mr. Stewart: All right. Produce the record.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Stewart: Oh, "Do you recall telling him that?"

Trial Examiner Norwood: Objection overruled.

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2443 Mr. Stewart: I withdraw the objection.

Trial Examiner Norwood: Do you recall that statement?

The Witness: Protecting markets? I do not. I did discuss the subject, but not as to protection of markets.

Mr. MacIntyre: Off the record a moment.

(Discussion off the record.)

By Mr. MacIntyre:

Q. Well, if the record shows that you did say it, Major, may I ask you now what you meant by it?

Mr. Stewart: Well, I object to that on the ground—

Trial Examiner Norwood: Sustained.

Mr. MacIntyre: I will have to go into the record then.

Mr. Stewart: Certainly. That is why I gave you the record.

(Discussion off the record.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Now, you stated that Mr. Blake was named as president of the Rigid Steel Conduit Association instead of being named as chairman because of some rule in the by-laws?

A. That is right.

Q. It was within the power of you and the other members of the board of directors of the Association to

2444 change the by-laws when you desired; wasn't it?

Mr. Stewart: I am sorry. Do you mind my asking you to repeat that?

Trial Examiner Norwood: Read it.

Mr. Stewart: Will you repeat the question, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. No, sir.

Mr. Stewart: There was something preceding that, wasn't there?

(Previous question and answer read.)

(Discussion off the record.)

By Mr. MacIntyre:

Q. What is the answer to that last question?

A. I said it was not.

Q. How could they be changed?

A. Only by the consent of every signature to the Association.

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Q. But members could in that way change it?

A. If all the members agreed to change it, it could be changed.

Trial Examiner Norwood: Was that according to the by-laws or according to the—

Mr. Stewart: Mr. Examiner, the by-laws are in evidence and I submit that they determine how they
2445 could be changed.

Trial Examiner Norwood: If they are in evidence, I should think so.

Mr. Stewart: They are, sir. They are in evidence.

By Mr. MacIntyre:

Q. It would have required no more trouble to change them so as to make Mr. Blake the chairman than it was to take a vote among the members to employ him and make him president; would it?

A. My recollection of the by-laws is that once they were passed they could only be amended by the consent of all the signatures to it, and—

Trial Examiner Norwood: That isn't what he asked you that last time.

Read the question.

Mr. Stewart: The question was how much trouble.

The Witness: How much trouble. I am trying to say that the employment of Mr. Blake was by the majority vote of the Association, whereas the change in the by-laws would automatically allow a man to withdraw from the Association if he didn't like the new by-laws.

By Mr. MacIntyre:

Q. Was it any more difficult at the time you hired Mr. Blake to have secured the unanimous consent of having him named as chairman than it was to have him employed and named president?

2446 A. If there had been any point to it or any reason for it, it wouldn't have, no. But I know of a great many large corporations that have chairmen of boards and presidents, both.

Q. In what manner, if any, did this matter of store-door delivery put you in a difficult position?

A. I thought I covered that pretty thoroughly in my testimony.

Mr. Stewart: You will have to answer it again, Major Quinn.

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The Witness: Oh.

Mr. Stewart: He is asking you.

A. The railroads, for some reason or other—I presume coming down from the old days of the "public-be-damned" policy—would not take up trucking. I have a very clear recollection from a personal standpoint of that, because my father-in-law is a retired railroad man, and he suggested to the New York Central that they adopt the policy, and they declined it. This allowed a great many large trucking companies to become established in this country, and they become—they become a very large factor in—in hauls to metropolitan areas and to the territory surrounding metropolitan areas. The railroads then discovered that they had made a mistake in allowing the formation of these large trucking systems, and they attempted to counteract them by the adoption of store-door delivery. Now, store-door delivery means that their wagon calls for it at
2447 your place of business—

Q. Yes. Just a moment, Major. You are telling me the reasons why they adopted it and how they adopted it. I am asking you now the question as to why their adoption of store-door delivery made any difficult problem for you after they did, not why they did it.

A. The adoption of store-door delivery did not make any difficult problem for us, but when the railroads fell out among themselves and quoted different store-door deliveries for the same points, then it made it a very difficult problem for us.

Q. And why did that make it a very difficult problem for you?

A. Do you want me to again repeat my testimony?

Q. This matter of rates.

A. I understand. If you want me to repeat it. It is in the record.

Trial Examiner Norwood: Answer his question. You need not ask him what he wants. Just answer his question.

A. The railroads allow you 6 cents a hundred if you do the work yourself, and they allow the man at the other end 6 cents a hundred if he does the work, which is a total of 12 cents. The original store-door delivery minimum rate was 45 cents. That meant that any point—and you understand the store-door delivery only covers l. c. l. shipments.

It does not cover carloads. That meant that at any
2448 point on certain railroads that if the base l. c. l. rate

ran under 33 cents, that railroad's store-door delivery rate was less than the Pennsylvania's rate of 45. Now, it so happens that we ship to a number of places where the Pennsylvania and the New York Central both serve the point, the town. The rate would be 45 cents for the Pennsylvania; might be 36 cents via the New York Central. Now, the customer would ask us for the 36-cent rate on the New York Central—that is, the New York Central's rate—and then send in the order asking us to ship it via the Pennsylvania, and we declined to do that. We declined to absorb the 9 cents a hundred freight; and that is the difficulty we were put to.

Q. So it became important, then, for you in your freight rate compilations to have rates specified whenever they were different—

A. I—

Q. —if you were using those rates in quoting prices; is that correct?

A. I would say yes, although I would have to refer to the—to those old freight bulletins to make an absolutely correct answer, but my recollection is at one stage or another they were both published.

Q. If you quoted prices, however, on the basis of the highest of the two rates that applied over two routes,
2449 such as you have just explained, it would not be important for you to know the other one; would it?

A. Yes, but we didn't do that.

Q. Well,—

A. It wouldn't be important if we quoted that way, no.

Q. No, if you quoted that way it wouldn't be important?

A. It wouldn't be important, no.

Q. Because you would get the biggest return irrespective of which route was selected by the buyer?

A. That is correct.

Q. You testified that the use of these price cards was a matter of convenience; that is, referring to them by number—

A. That is—

Q. —and having the number on one of yours as of a given time the same number as appeared on your competitor's card?

A. That is the only reason I have ever known. The system was in vogue when I went into the conduit business in 1919, and it has continued ever since.

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Q. And you meant by that a convenience on the part of anyone in comparing your quotations with those of your competitor?

A. That is correct; and the convenience of ourself in—

Q. Doing the same thing?

A. —doing the same thing.

Q. Why is it necessary, when you make a change
2450 in your prices,—strike that.

Why is it necessary when your competitors make a change in their price cards for you to know that before you make a change in yours, in the event that it is a price increase?

A. Well, it isn't always necessary because we have initiated cards ourself. We put them out before anybody else does, but if somebody else comes out with a card it must be apparent that we have got to know about it before —or otherwise we wouldn't know the card was out. We wouldn't be interested in the change of card.

Q. But why is it necessary, though, for you to know that one of your competitors has put out a card advancing the price before you do so?

A. Why is it necessary? I tried to cover that in previous testimony. I have never been a good enough salesman to get one cent more than my competitor; and I have always been greedy enough to try to get everything that I could; and I look with a great deal of favor on the competitor of mine that raises the price because I happen to be one of the owners of the Enameled Metals Company.

Q. And you try to get as much as they do?

A. I'd get more if I could.

Q. But do you try to get as much?

A. Yes, sir.

2451 Q. Is that the reason why you publish your card specifying in there price quotations that are exactly the same as your competitors'?

A. That is the reason that we publish them the same, that is, when we don't initiate the card. If we initiate the cards, of course, we then do it ourself.

Q. Has anything in the nature of a change in the price of raw pipe or a change in the cost of labor in your manufacture of rigid steel conduit had anything to do with the changes that you have made in your announcements as to your method of doing business with your jobbers and wholesalers?

A. Well, now, I don't know that I understand that question, Mr. MacIntyre.

Mr. MacIntyre: Will you please read the question?

Trial Examiner Norwood: That is clear. Read it.

(Question read.)

A. Assuming that you are referring to my letters to the trade, in almost every case that I can recall that announcement of a change of conditions of sale was caused by an advance—either an advance in the price of raw pipe, or raw materials, of labor, or a congestion of orders, due to priorities and other things, that would make it necessary for us to limit the sales of our goods.

Q. Now, will you please answer my question, Major? It goes to the method that you used in the handling
2452 of your business with your jobbers and wholesalers, such as to whether it would be consignment or warehouses, or what not.

A. Is that what you meant in your previous question?

Q. Yes.

A. That isn't what your question said.

Trial Examiner Norwood: Yes, I think that is what it was.

Q. Now, will you please answer that question with that view?

A. As I understand the question, you want to know if there is anything else, or is it a fact that the pipe, labor, and the other materials are the essential elements that cause us to change—

Trial Examiner Norwood: He asked you if these changes in cost of labor and material caused you to change your methods, not your prices, but your methods, in any way with respect to dealing with jobbers or selling on consignment.

A. My answer is yes.

Q. In what way?

A. We used to have a system of long drawn out building contracts. Some concerns even had the habit of taking blanket orders at low-priced material. If, in the judgment of the executives of our company, there is apt to be a rising market as to raw materials or an increase in
2453 the price of labor or, in the case of the present year, where to meet the requirements of the Government's demands we have had to work Saturdays and pay time and a half, which is an 8 percent increase in our labor costs,

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then when we foresee those things, if we are able to, we commence to change our method of selling so that we will not have hanging over our head a lot of low-price business for future delivery.

Does that answer your question?

Q. Do those factors have anything to do with the question as to whether or not you are going to put in a consignment contract or stock?

A. We have not put in any consigned contracts this year.

Q. I know, but I am asking you whether or not that the changes in the price of raw pipe, and the changes in your labor conditions had anything to do with your decision of eliminating or establishing consigned stocks—

A. It would not.

Q. —or warehouses?

A. No.

Q. Or warehouse stocks?

A. It wouldn't have any.

Q. And hasn't had any at any time, has it, Major?

A. In the establishment of warehouses or consigned stocks, no.

Q. And have those two items had anything to do
2454 with the fact that you have changed your method of quoting on a Pittsburgh and Chicago—on a Pittsburgh and Evanston base, or bases, to Chicago and Pittsburgh bases?

Mr. Stewart: Just a moment. What is that question? What two items? What items?

Trial Examiner Norwood: Wait a minute.

Read it.

Mr. MacIntyre: Changes in the price of raw pipe and changes in labor conditions are the two items to which I am referring.

Mr. Stewart: But you have more than that in the question.

(Question read.)

A. They have not.

By Mr. MacIntyre:

Q. Did they have anything to do with that change?

A. Not labor or raw pipe.

Q. All right.

Now, what way have you to connect that change from quoting on a basis of Pittsburgh and Evanston to a basis of Pittsburgh and Chicago?

Mr. Stewart: I object. There is nothing in the evidence that they made such a change.

Trial Examiner Norwood: Did you make such a change at one time?

2455 The Witness: Yes.

Mr. Stewart: All right.

Trial Examiner Norwood: Objection overruled.

A. The original Evanston base was made Evanston because the conduit plant was in Evanston. Then another plant was established at Indiana Harbor. Then the Clayton Mark Company bought one of the war brides of the last war and became a manufacturer of pipe and conduit again, and they were in the City of Chicago.

Now, there was a five-cent differential of freight between Chicago and Evanston, and so as to clear that situation the Chicago and the Evanston base became one, and it is still one. It doesn't make any difference whether the material is sold from Evanston or Chicago. It carries the same base.

By Mr. MacIntyre:

Q. It carries the Chicago base price?

A. The Chicago base price is the Evanston base price.

Q. But it is figured from Chicago on that basis of figuring rates?

A. That is correct.

Q. And not from Evanston.

A. Well, I would have to check the—well, answering directly, no, but I believe the Evanston rate and the Chicago rate, outside of the metropolitan area of Chicago, is exactly the same.

Q. What about all that multitude of destinations 2456 in the Chicago switching limits?

A. I would say that they are exactly the same.

Q. Your testimony is there is no difference; is that correct?

A. That would be my judgment based on Pittsburgh. We are as far from the downtown section of Pittsburgh as Evanston is from the downtown section of Chicago, yet our rates are exactly the same, either west or east, north or south, or in the district itself.

Q. You are assuming, therefore, that they are the same in Chicago?

A. That is correct.

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Q. You don't know?

A. I don't know.

Q. Now, you have stated that you did not get prices that are quoted on these cards but you merely hoped to. Do you recall that statement in the testimony?

Mr. Stewart: Now, I object to that. If Mr. MacIntyre would like to have the correct statement, I think what Major Quinn said was that the cards were the things to be hoped for.

Trial Examiner Norwood: I think that is the substance of his question.

Mr. Stewart: Well, if that is the substance, that is another matter.

2457 The Witness: What is the question?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Stewart: Merely what?

The Witness: Hoped, h-o-p-e-d.

A. That is correct.

By Mr. MacIntyre:

Q. That is, you hoped to get them, but you do not get the prices.

A. Not always.

Q. Is it your testimony that you just failed to get them in some instances instead of not getting them at all?

A. That is positively correct.

Q. Now, I show you Commission's Exhibit 722, which is an abstract of bids submitted by you and a number of your competitors to the Navy Department on November 21, 1939, showing that for the Navy Yard at Portsmouth, N. H., you and the General Electric Supply Corporation quoted a price on one-half inch conduit, quantity of 2,200 feet, a price of .0555 cents per foot, and a number of your other competitors quoted the same price.

Can you tell me how you and they arrived at any such figure in your quotations other than through the use of your price cards?

A. That is the only way that those prices would 2458 come as far as we are concerned. I can't say how they figured it. I know how our office figured it.

Q. And the only explanation that you can give for such uniformity in the level of the prices bid by you and them as is shown by this abstract is that you and they used the cards in making up the quotations?

Mr. Stewart: I object to that question on the ground that the question assumes a state of facts which is not supported by the exhibit, namely, that there is uniformity of prices, because the exhibit does not show the discounts which would necessarily have to be taken into consideration to determine whether the prices are uniform. That is Mr. MacIntyre's case.

Trial Examiner Norwood: I think he can talk about the quoted figures on there regardless of the discounts.

Mr. Stewart: But he says "the uniformity of prices."

Mr. MacIntyre: Talking about prices.

Trial Examiner Norwood: Do you mean prices that are stated on the blank there?

Mr. MacIntyre: In terms of cents per foot.

Trial Examiner Norwood: I will overrule the objection. He may answer.

A. I haven't the slightest idea how anybody else arrived at their figure. I already testified that the only way we know of in quoting the Government is to take our 2459 price card and figure it out, and that is what was done. The fact that these others were the same, it might mean that they figured it the same way as our girls do.

By Mr. MacIntyre:

Q. Well, is there any explanation other than that one that you can give for the uniformity in the prices?

A. I cannot speak for anybody else at all. I haven't any idea how they prepared their bids. I assume that is the only reason, but there may be many others.

Q. Well, is there any explanation that you can give us at this time as to—any other explanation as to why that they would be the same?

Mr. Stewart: Now, I object to that on the ground that obviously it is nothing but pure speculation on the part of the witness. He said he hasn't any other explanation and can't give any explanation as to how these others do that, and I submit that the question should not be pressed any further.

Trial Examiner Norwood: Well, he might answer this one. It may be a little different from the previous one.

Mr. Stewart: I suppose it is, but obviously—

Mr. MacIntyre: Let us have the question.

Trial Examiner Norwood: Have you any theory, idea, or explanation as to why those figures were the same?

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The Witness: Well, my only theory—and it is purely theory—is that in figuring a Government bid it is
2460 done by one of your clerical force. He or she, whoever it happens to be, takes the price list, adds the freight—and, of course, the Government wants to know what the price per foot is, so they figure that out, and, if they earn their hire, why, the figures should be the same if the price cards of the competing companies are the same.

Now, that is the only explanation I can give.

By Mr. MacIntyre:

Q. And if the price cards are not used, but the figures arrived at in some other way, then what would you say would be the result?

Mr. Stewart: I object. I think there ought to be a limit to this.

Trial Examiner Norwood: Well, if he can explain it any further he may do so.

Objection overruled.

A. I haven't the slightest idea of how prices could be figured other than on a price card.

By Mr. MacIntyre:

Q. And get the same results as are shown on this Exhibit 722; is that correct?

Mr. Stewart: I think he has answered that question about eight times now, and I submit that is sufficient.

Trial Examiner Norwood: Overruled. Let him answer.

The Witness: Let me have it again, please.

2461 Trial Examiner Norwood: Read the question.

Mr. MacIntyre: Well, you take his answer and my last question.

Mr. Stewart: The trouble is you want it answered in a certain way.

Mr. MacIntyre: You would have to read his last answer and my last question.

Trial Examiner Norwood: Read the question.

(Record read.)

Trial Examiner Norwood: What is your answer to that?

A. Well, there are many ways by which the same prices might be obtained.

By Mr. MacIntyre:

Q. How?

A. Well, one jobber might take the trouble to figure it and then call up and ask, "What are you going to quote on this job?"

Q. In other words, you do not see any other way except the price card that you and your competitors and their jobbers can submit identical prices to the Federal Government in bids under seal except by calling up each other and figuring it out that way; is that correct?

Mr. Stewart: He did not say that.

Trial Examiner Norwood: Let him answer, please.

2462 Q. Is that correct?

The Witness: Read the question, please.

Trial Examiner Norwood: Read it.

(Question read.)

A. I do not know of any way other than that.

By Mr. MacIntyre:

Q. That is,—

Mr. Stewart: I submit that has been sufficiently answered. I object to any further questions on this line.

Trial Examiner Norwood: Yes. You may take up something else. He has answered that.

By Mr. MacIntyre:

Q. You get the same result—

Mr. Stewart: I object if it is going to be any further questioning on this subject.

Trial Examiner Norwood: Let him ask the question and then you are privileged to object.

By Mr. MacIntyre:

Q. You get the same result whether you use the cards in submitting bids to the Government under seal or in making price quotations to the trade generally.

Trial Examiner Norwood: Now, wait a minute.

Q. Is that correct?

Trial Examiner Norwood: Don't answer that question. You covered those points.

2463 Mr. MacIntyre: I have been talking about Government bids, if Your Honor please. I am talking about quotations made to the trade generally now.

Trial Examiner Norwood: Read the question.

(Question read.)

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Trial Examiner Norwood: I beg counsel's pardon. Answer the question.

A. You are talking about identical quotations?

By Mr. MacIntyre:

Q. Yes.

A. Do you mean by "trade," our customers or the consumers?

Q. I am talking about your customers.

A. Our customers?

Q. Yes.

A. Our consignment contract requires that we figure it on the card. Now, if all of them, our competitors, have the same card and they all operate under consigned stock, and they are all honest, the cost to the jobber would be the same.

Q. Just as it would to the Government?

A. Under those conditions.

Q. You know of any instances, or at least of some instances, where you have not used the card in submitting bids to the Federal Government, and in those instances you quoted different prices from some of your competitors; is that correct?

A. Yes, sir.

2464 Q. Now, you have stated that it has been the practice of a number of your jobbers to purchase from your consigned stocks for their own account when price advances are announced and before the price advances become effective. Do you recall that testimony?

A. Yes, sir.

Q. And when they make resales of such conduit purchased under such circumstances at different prices than those provided for in your codes, including jobber's compensation, it does not mean at all that you did not get your card price on such conduit from those jobbers, does it?

Mr. Stewart: I object to that unless the card is specified.

Which card are you talking about, the old card or the new card?

Mr. MacIntyre: You were not specifying any card when you were asking about this matter.

Mr. Stewart: I was not asking about this.

Trial Examiner Norwood: Read the question.

(Question read.)

A. It means that we got a card price on everything we sold, but if they were fortunate enough to buy, or smart enough to buy, at a lower card, and then sold it to somebody at a lower figure than what the new card would have amounted to, the fact that they did that does
2465 not mean that we did not get the effective card at the time that they purchased the material, which may have been months before.

Trial Examiner Norwood: Why do you let these people buy from the consigned stock in that way?

The Witness: Well, our business is no different than most all modern business. Actually our contract, our consigned stock contract, is such that they are not allowed to, but you are constantly hampered by the actions of your competitors, and in the normal years, when there is large building contracts, even if you insisted—as a matter of fact at one time our company demanded a report on the night of a change in card of the sales to that date. In those days we attempted to. But the jobbers defeated the purpose of it by simply withdrawing the old price. So as long as they are going to buy it, you may just as well let them buy it, because there is no way to police it except at great expense to yourself.

2466 (Whereupon, at 4 o'clock p. m., December 4, 1941, the hearing in the above-entitled matter was adjourned.)

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2469 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is now reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., on the 5th day of December, 1941.

Please note the appearances.

Mr. L. R. Quinn resumes the stand.

Proceed with the cross-examination.

L. R. QUINN resumed the stand and testified further as follows:

Cross-Examination (Continued) by Mr. MacIntyre.

Q. Major Quinn, you testified that you took the contract for the conduit on the Social Security Board Building here in Washington. And were your card prices applying for Washington? Do you recall?

A. That is correct.

Q. What month was it that you entered into that contract?

A. It was either August or September, 1938.

Q. That was some four or five months after some of the so-called nibbling at the prices by some of the smaller people in this eastern seaboard territory; wasn't it?

2470 A. After—

Q. Yes. Didn't that start about June, May and June, 1938, as disclosed by the evidence you have put in here, Respondents' Exhibits 69 to 102?

A. Well, I have never known a time since I have been in the business, up to this present emergency, that there wasn't nibbling at the price.

Q. Yes, but it was more in evidence after May and June, 1938, than it had been previous to that?

A. I would say yes.

Q. You took the contract on the Social Security Board Building in late summer or early fall of that year?

A. That is right.

Q. Did you sell that through some wholesaler or jobber in Washington?

A. No.

Q. In your own name?

A. We sold it directly to the contractor.

Q. And how much conduit was involved?

A. I—as I recall, the original contract called for some 25 cars, but all of that was not taken.

Q. But you entered into a contract to deliver to them 25 carloads?

A. That is right.

Q. Over what period of time?

2471 A. Over the life of the building. Over the life of the building.

Q. The life of the construction of the building?

A. Yes. Yes.

Q. Will you please tell us what the price on one-half inch galvanized was on that job?

A. I can't give it to you out of my mind. I can send you the contract if you would like to see it. The price was approximately card 72, but it wasn't exactly card 72.

Q. You made your quotations in your contract coincide with approximately those of 72?

A. We met the quotation of another concern, and they were in writing, and we met the same prices.

Q. Well, on some items you did quote 72 exactly; didn't you?

A. That I couldn't tell you, Mr. MacIntyre, without referring to the contract.

Q. Will you submit to me a copy of the contract?

A. I will.

Q. Now, referring to Respondents' Exhibit 59, this first column of prices, under the caption "Cost per hundred feet to the consumer," that is what you called your gross price card price on the Pittsburgh base; isn't it?

A. That's right.

Q. In other words, that is what is shown in your

2472 gross price card which is in evidence here.

A. I would say not. I would say it was 5 percent cash discount taken off.

Wait. I can check it very quickly.

(Referring to records.) No, that is the gross. That is the gross of what—

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Q. In other words, that is the price that appears in your price cards for the Pittsburgh base?

A. That is right.

Q. In other words, it is a restatement of the Pittsburgh base price?

A. That is right.

Q. And the terms of compensation to distributors of 5 percent in many instances and 6 percent after a particular date, are shown to be the terms in your price cards?

A. That is correct.

Q. That is, terms of discounts to your distributors?

A. That's right.

Q. And the last column of prices under the caption "Cost to distributors and return to the manufacturer," is a statement of the Pittsburgh base prices—

A. That is right.

Q. —on the dates indicated in your net price cards?

A. Well, we have no net price cards. We only have the one price card. It is the gross of the price card
2473 with the compensation together, and that is the amount which the distributor pays to us previous to his deduction of cash discount, and, of course, the cash discount is another five beyond this which comes out for cash discount. This is the amount of the card less the compensation.

Q. That is, less the—

A. Compensation.

Q. —trade discount, so to speak?

Mr. Stewart: No.

A. No. No. This is trade discount to the distributor. This is the price in the contract.

Q. This 5 percent which is in the column—

A. Compensation to distributors.

Q. —entitled "Compensation to Distributors" is a percentage that you allow to anyone to whom you sell as a distributor or jobber?

A. That's right.

Q. And that is true as to whether he orders it on his own account from you or orders it after you have placed it in a consigned stock to your account and he takes it out on his own account?

Mr. Stewart: Object—

A. There is a difference—

Mr. Stewart: All right. Go ahead.

A. There is a difference of one percent, but it is
2474 practically inoperative. The card, as it reads, allows only 5 per cent on a direct purchase and 6 percent on consignment, but I know of very few cases that the man that buys outright does not get the 6 per cent, so far as our company is concerned.

Q. That is, when he buys outright, if he is a jobber or a wholesaler, he gets the 6?

A. That is right.

Q. Whereas, if he took it out of your consigned stocks for resale he would get the 5 percent compensation?

A. He would get 6. The compensation—the consigned stock carries 6 percent. A literal reading of the card carries 5.

Q. Did it carry 6 percent prior to card 74, November 17, 1936?

A. Well, card 74 carried a 5 percent. Card 75 carried a 6.

Q. Yes, but did you allow your jobbers and distributors, wholesalers, 6 percent prior to card 75?

A. We did not.

Q. And you did not allow them 5 percent up until that time, whether they took it from your consigned stocks for resale on their own account, or whether they ordered it direct from you—

A. That is right.

Q. —on their own account? It was 5 percent?

A. Five percent.

Q. But after the issuance of card 75 you began to allow—

2475 A. Six percent.

Q. —all jobbers and wholesalers 6 percent?

A. That is right.

Q. If they were ordering it on their own account or if they were taking it for their own account from your consigned stocks in your possession?

A. From all consigned stocks in our possession; yes. In their possession; not our possession.

Q. So, since card 75 if one of your jobbers or wholesalers desired to purchase conduit from you out of a consigned stock which he was holding for you, you allowed him a discount of 6 percent?

A. That is right. A compensation of 6 percent.

Q. What is the compensation for in such instance?

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A. He is acting as our agent.

Q. In selling the goods to himself?

A. In selling the goods to somebody else for us.

Q. Well, I am talking now about the situation where he tells you that he is buying it for his account out of your consigned stock which is in his warehouse.

A. He does not tell us such a thing. He reports the consignment sales every month. He does not tell us where they go to.

Q. Is it your testimony now, Major, that you never sold out of your consigned stocks in the possession of these
2476 distributors or wholesalers or jobbers for their account?

A. I testified yesterday, and I testify again today, that every time an advance of a card takes place the jobber invariably buys material for his own stock. But he does not tell us he buys the material for his own stock; he reports that sales consigned for the month are so much.

Q. How do you know, that he buys it for his own account if he does not report it to you?

A. We do not actually know it, except that when he two or three months later, the same jobber, quotes a price lower than the present price and delivers our material, he must have bought it at a lower price.

Q. Well, do you know that to be a fact from investigations that you made?

A. Yes, I know it to be the fact.

Q. And even on such purchases as those you allow him the so-called compensation; is that correct?

A. That is correct.

Trial Examiner Norwood: You are able to recognize the symptoms.

The Witness: Yes. If a man sells $2,000 worth a month and suddenly sells ten, you have a pretty good idea he is buying it for himself.

By Mr. MacIntyre:

Q. And in those instances you allow him 6 percent.

2477 A. That is right.

Q. And you call that compensation to him.

A. That is right.

Q. Now, under this consigned stock arrangement, I believe you testified that you had a greater control over the manner in which it was handled than when sales were made

outright from your warehouse stocks to jobbers in the neighborhood.

A. Previously.

Q. That is, you had done previously when you did maintain warehouse stocks?

A. That is correct.

Q. And the control—

A. You understand at the same time we adopted the new consigned stock contract we also adopted a direct sales contract, which controlled the customer to the same extent.

Q. And the control about which we have been speaking, that is, the greater control which has been brought about by the circumstances and conditions that we have just been discussing—

Mr. Stewart: What are those, may I ask?

Q. —the adoption of the consigned stock arrangements and the like, aided you in alleviating the difficulties that you were experiencing when you did have the warehouse stocks?

A. Oh, the warehouse stocks had nothing to do with the consigned stock contracts at all.

2478 Q. I know, but on direct examination you told us about what difficulties that you ran into through the maintenance of warehouse stocks.

A. I still state that, but that had nothing to do with the consignment contract.

Q. Now I am asking you as to whether or not it is a fact that after you went unto the consigned stock basis you found that they did relieve you of some of the difficulties which you had experienced during the period of the operation of the warehouse?

A. None whatever. There is no connection between the two.

Trial Examiner Norwood: Well, didn't you change from the one to the other for some reason?

The Witness: I have already testified why we gave up the warehouses. It was uneconomical. But it had nothing to do with the adoption of the present consigned stock or any previous consigned stock. There is no connection between the two, and nothing in the present consigned stock was—in any way changed the relations of the warehouse.

By Mr. MacIntyre:

Q. Well, let me put it this way, Major: To a considerable measure, a substantial measure, the purpose of your

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changeover from warehouse stocks to consignment stocks was accomplished; is that correct?

A. Mr. MacIntyre, you apparently have an en-
2479 tirely false conception. The warehouse stocks, as I testified, were something that came in at the start of the electrical business when the jobbers were not big enough to carry their own stocks, and in the early days they paid a service charge of four points, or $8 a ton, for the warehousing expense. Then as the business grew and the jobbers grew they developed their own warehouses, but there were certain small jobbers that still did not have facilities or did not have the desire to stock the material, and the warehouses were allowed to remain. They were uneconomical from every standpoint, and eventually our company abolished them, but there was no connection between the abolishing of the warehouse stocks and the adoption of any consigned stock that we have ever had.

Trial Examiner Norwood: You do take care of the small jobbers now?

The Witness: No. They have to have consigned stock or buy from the mill.

Trial Examiner Norwood: Well, you let them have it on consignment, do you?

The Witness: That is right. That is, if their credit is substantial.

By Mr. MacIntyre:

Q. Well, the discontinuance of your warehouse stocks brought about, at least in substantial measure, the conditions that you hoped the discontinuance would bring about, didn't it?

2480 Mr. Stewart: I object to that particular question and ask that it be made more specific. Now, just what that means I don't know.

Trial Examiner Norwood: Objection overruled. I think it is clear.

A. The only hopes that we had in the elimination of the warehouses—

By Mr. MacIntyre:

Q. Now, you are not answering the question. You have told Mr. Stewart already why you discontinued them, and now I am asking an entirely new question.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Stewart: What that means I don't know.

A. I said we hoped in the abolition of the warehouses to save ourselves money and have a better control on our own business.

By Mr. MacIntyre:

Q. Well, in so far as you stated to Mr. Stewart on direct examination the reasons for your discontinuance of the warehouse stocks, would you say that you in substantial measure accomplished those purposes in the discontinuance of them?

A. In a major measure, I assume you mean "substantial" to be a major measure.

Q. Yes.

2481 A. Yes, in a major measure we did.

Q. Now, in your adoption of the consigned stock agreements and the sale on the consigned stock basis, you accomplished in a major measure the purposes for which you adopted that method of selling, did you?

A. Mr. MacIntyre, as an officer of a company, if we were big enough to properly take care of ourself, there never would be a consigned stock in our business. I have never believed in consigned stocks. We are forced to carry consigned stocks because some of our larger competitors had already come out and announced it.

Q. Now, Major, will you please answer the question.

A. I am doing the best I can.

Trial Examiner Norwood: Do you mean you did not purposely adopt it, not for any special purposes, except—

The Witness: Mr. Commissioner, in the—in business, if one large company—and in the case of the consigned stock it was the largest company—suddenly came out with a consigned stock program whereby your customer has to invest no money, the material is shipped in, and all he has to do is to report the sales on the 24th of the month and pay for it on the 15th of the following month—if the largest man does that, the smaller man can't do any different and say, "You have to pay cash." You have to follow the same method as the other man.

Trial Examiner Norwood: Go ahead.

2482 By Mr. MacIntyre:

Q. Well, in so far as you stated to Mr. Stewart on direct examination as to the reasons why you adopted your consigned stock method of selling, would you say that you

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in a major measure have met the purposes that you indicated to him that caused you to adopt that method?

Mr. Stewart: Now, I object, unless the counsel specifies the purposes he has in mind. It is the type of question that is a catch-all, and unless the witness knows exactly everything he said on the direct examination, I submit that we haven't the faintest idea of what Mr. MacIntyre is trying to get at.

Trial Examiner Norwood: Well, I will ask the witness. Did you state in your direct examination certain purposes you had in adopting the consignment method?

Mr. Stewart: Well, Mr. Examiner—

Trial Examiner Norwood: Do you recall that?

The Witness: Well, I believe the question was much more explicit. Our companies had three different forms of consignment contracts. Now, if Mr. MacIntyre means the original contract, the second contract, or the last contract—

Trial Examiner Norwood: You mean, then, in your previous examination you stated certain reasons for adopting one particular contract over another?

2483 Mr. Stewart: No, sir. May I be heard on that?

Trial Examiner Norwood: Yes.

Mr. Stewart: The whole point is this—and I have no desire to try to tip Mr. Quinn off as to what I want him to say in this situation, but the point is this: The record shows plainly, and Mr. Quinn made it perfectly plain in his direct examination, that his company had been using the consigned stock method of selling since 1925, and I put in evidence a form of contract dated 1928. Now, Mr. MacIntyre, I suspect, uses the phrase "adoption of a consigned stock contract" advisedly for the purpose of fixing that with the Blake contract.

Now, what I am asking is that in fairness to the witness he say what does he mean. Is he talking about the consigned stock method of doing business, the adoption of the Blake form of contract, or what does he mean?

Trial Examiner Norwood: I think that he is merely asking this witness whether or not he was successful in accomplishing the objectives for which, according to his previous evidence, he adopted the consigned stock method.

Mr. Stewart: No, he did not say consigned stock method; he said consigned stock contract. That is all right if he asks that.

Trial Examiner Norwood: If the witness does not understand the question, let him say so.

2484 Mr. Stewart: Yes, sir.

Trial Examiner Norwood: Go ahead.

Is there a question pending now?

Mr. MacIntyre: Yes. It has the word "method" in it and not "contract."

Trial Examiner Norwood: Read the question.

(Question read.)

A. My answer is we naturally did or we would have discontinued the new method.

By Mr. MacIntyre:

Q. Now, you have told him on direct examination as to the reasons why you adopted the form of consigned stock agreement in late '36 or early '37 as was proposed by Mr. Blake. Will you now tell us whether or not that the purpose based on those reasons of your adopting that contract form was accomplished by you in any substantial or major measure?

A. Will you define what you mean by "purpose"?

Trial Examiner Norwood: You can answer it. Use your own meaning for the term.

Q. And tell us if it is any different from the usual.

A. The contract did not accomplish one primary object of adopting it, and that is to make the contractor jobber pay as a contractor for that that he bought as a contractor, and as a jobber that that he bought as a jobber, because all concerns did not adopt the contract, and we were

2485 again faced with the question of competition.

Q. Did it accomplish the other purposes?

A. If I testified that there was other purposes, they were accomplished.

Q. Now, as to this one purpose which it did not accomplish, how did you handle the problem?

A. We had to elect on our own judgment whether we wanted to sell the man both his own and what he sold to others at the jobber's price, or discontinue doing business with him.

Q. So you elected to sell on a card less the jobber's compensation?

A. If we cared to.

Q. Well, you have done that?

A. We have done that.

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Q. Yes.
A. Yes.
Trial Examiner Norwood: Did you do that to the jobber and the contractor, both?
The Witness: In some cases we did, yes. I tried to explain the other day at length the trouble arising from the contractor-jobber.
Trial Examiner Norwood: Yes.
The Witness: And we have sold that type of jobber since 1937 as a jobber, even though we knew he was using the material for himself. That I think is the purpose 2486 of Mr. MacIntyre's question.

Q. Well, while we are on that subject of contractors, I call your attention to the fact that you testified on direct that this matter of selling so-called contractor-jobber as a combined jobber presented difficulties or problems which you had to handle. Explain that problem to us now, Major.

A. I thought I had covered it pretty thoroughly the other day, but I will be glad to do it again.

In certain sections of the country—in all sections, as a matter of fact, there are contractors who want to have an advantage over their competitors, so they open up a little hole in the wall and in some cases right in connection with their contracting business, which they establish as a jobbing house sometimes under the same name, sometimes under a fictitious name. They then buy as a jobber, and when they are quoting in competition with the other contractors in the town who do not have that advantage, they have the advantage of that distributor's compensation that you just interrogated me about, which is, namely, at the present time 6 percent.

Now, in the average large type of building 6 percent would be enough on the conduit to win the contractor that job as against his competitor. Naturally, the competitors then come to their source of supply and say, "Here, you have got to supply me with conduit at the same cost as John Smith; otherwise, I won't be able to quote a 2487 competitive bid," and then the distributor-agent comes back to the factory and says, "Here, you have got to sell me this material at an additional 6 percent discount or compensation so that I can in turn give the—my customer what should normally be my cost," and, naturally, that makes a very disturbed market.

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Q. In other words, the distributor wants a better price than you gave to the contractor and who is competing with a customer of his; is that correct?

A. Well, now, you will have to repeat that. I am a little confused.

Trial Examiner Norwood: Read it.

(Question read.)

Q. Customer of the distributor.

A. I don't think you mean that question the way it is worded. I will answer it as I think—what I think you meant to ask me.

The distributor wanted a better price than he would normally get because a competitor of his was obtaining a better price.

Q. Yes.

A. Is that what you meant by the question? That is correct.

Trial Examiner Norwood: Well, the distributor wants a price so that he can quote his customer in competition with the contractor which you might sell.

The Witness: That is correct. That is why I said his question did not say so.

2488 Trial Examiner Norwood: Yes, I think his question asked you that.

The Witness: Well, all right. Then, I did not understand it.

By Mr. MacIntyre:

Q. Now, what difference does it make to you, Major, in your sales to a man whether he is labeled "contractor" or whether he is labeled "distributor" if they buy in approximately the same quantities as of a particular time or for a particular order?

A. If we sold in one town and to one man in that town only, we then have to decide whether or not we can afford to do business with him, but where you are selling on a country-wide basis, and you have adjacent cities such as Cleveland and Buffalo—in Buffalo there are three or four of the so-called contractor-jobbers. They have the advantage of this extra price. In Cleveland, to the best of my knowledge and belief, there is no contractor-jobber. When the jobbers in Cleveland discover that we have put our jobbers in Buffalo in position to meet the competition of the contractor-jobber, and in view of the fact that their

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salesmen cross each other in their territories, they immediately demand that we give them the price that we are giving to the Buffalo jobber.

Q. Oh, you do that because of things that are said to you by jobbers in adjacent cities because of the
2489 practice of selling a combination jobber-contractor; is that correct?

A. Not things they say to us. The demands they make upon us to meet the same price.

Q. And that is the reason you don't sell the combination contractor-jobber?

A. I have testified we do sell them.

Q. Well, I know, but in instances where you do refuse to sell them, you do it because of these demands?

A. That is—that is correct.

Q. And you have found that a jobber in Cleveland, for example, is in competition with the so-called contractor-jobber in Buffalo for certain jobs?

A. That's right.

Q. And have you also found that jobbers and contractor-jobbers in Washington, D. C., for example, are in competition with jobbers and so-called contractor-jobbers in Baltimore for particular jobs?

A. Of my own knowledge, I do not know of any contractor-jobber in either Washington or Baltimore; so I can't answer your question.

Q. Well, let us restrict that to jobbers or wholesalers. Then how would you answer the question?

A. If the jobbers in Washington obtained a better price than the jobbers we are—than what we were quoting the jobbers in Baltimore, the Baltimore jobbers would
2490 demand that they be put on the same basis because they sell the same general class of trade and the towns being so adjacent that they are calling upon, soliciting business from the same class of trade.

Q. You find that they are in competition with each other?

A. Oh, yes.

Q. And have you also found that jobbers and wholesalers of rigid steel conduit in Philadelphia are in competition with jobbers and wholesalers of rigid steel conduit in Baltimore?

A. I testified yesterday that we do practically no business in Philadelphia. You will have to ask that question

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of somebody who does business in Philadelphia. Our business in Philadelphia is so negligible that—as a matter of fact, we do not have an agent in Baltimore—in Philadelphia.

Q. Well, you told me yesterday afternoon that you sell approximately 5 percent of your business to jobbers and wholesalers in Washington and Baltimore combined.

A. That is right.

Q. Do you find that they are bidding on jobs in the Philadelphia area at times?

A. In rare cases they may be. Certainly, they do not.

Q. Well, on large Government projects and the like you have found that they have?

A. My answer would be that they have not, to my knowledge.

Q. What about large commercial projects?

2491 A. The same answer. There may be rare occasions where—there may be rare occasions where they have a pet contractor who is operating out of Baltimore, and he may decide that he wants to bid on a job in Philadelphia. In that case he may go to his ordinary source of supply in Baltimore and get a price, but I—I think it would be a very rare occasion if the Baltimore jobber would get that business because there has got to be considerable service on a job that must be done from the jobber's stock to the place of the erection of a building, and the man in Baltimore couldn't afford to truck it from Baltimore to the site in Philadelphia, so that the normal procedure would be for the man in Philadelphia to buy—for a man on a job in Philadelphia to buy from Philadelphia.

Q. You sell a substantial amount of your conduit to jobbers in Cleveland?

A. Cleveland and Buffalo, if I recall correctly, I testified was about 5 percent.

Q. And you know that the jobbers to whom you sell in Cleveland—jobbers and wholesalers of rigid steel conduit to whom you sell in Cleveland—compete with the large jobbers, with the wholesalers, jobbers, who are located in Pittsburgh to whom you sell?

A. I have never known of any competition between Cleveland and Pittsburgh on jobs. There are a num-

2492 ber of large hardware concerns in Cleveland that sell in 18 States in the Union, and they travel salesmen in Pittsburgh, and they go as far south as Florida. Now, in

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those isolated cases those men would be competing with the jobbers in Pittsburgh, but their sales are negligible.

Q. Is it your testimony now, Major, that jobbers to whom you sell in Cleveland and jobbers to whom you sell in Pittsburgh have not submitted quotations to the Government on projects at Chillicothe and Dayton, Ohio, at Wright Field?

A. I don't recall of any customer of ours quoting on either Chillicothe or Wright Field. If they did, they quoted without our knowledge. I have never seen the quotations go out of our office on either point.

Q. Is it your testimony that they don't do it?

A. I can't tell what anybody else does without my knowledge. I—

Q. Is it your testimony now you just don't have any recollection whether they have or not?

A. That is—I don't know what anybody else does.

Q. You told Mr. Stewart that agents had reported to you that prices had been quoted in Chicago below the card prices. Do you recall that?

A. That's correct.

Q. What you meant there was that they had reported to you that sales had been made below the card, which
2493 included the so-called 6 percent jobber or wholesaler compensation?

A. That is correct.

Q. Could you tell by looking at your invoices under which you billed your shipments to Chicago as to whether these jobbers or wholesalers had cut their compensations in their resales?

A. I could do it if I was going to be here for several more days, but I would have to sit down and figure them. I am not an invoice clerk, and I would have to figure—I would have to figure each item. The young men that came into our plant and got the invoices have also the price cards, and they could figure it very quickly.

Q. Well, what I am attempting to get at now, Major, is whether you relied upon the reports of these agents, or whether you figured it out from your invoices.

A. I don't quite understand that question.

Do you mind reading it, please?

(Question read.)

A. The agents in sending in an order, the usual sequence would be this in the cases where the prices have

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been cut: The usual sequence is to write us a letter and say that "John Jones Company are reflecting an extra 5 percent in their quotations, and I can obtain such and such a piece of business if you will meet that competition."

Then our company has to elect whether we, first,
2494 believe our agent, and, second, whether we want to take the business, and if we do take the business the invoice will reflect that price.

Q. Well, how could you or this jobber or wholesaler, whom you call an agent, in Chicago, determine from quotations made by somebody else—

A. When I use the word "agent" I am talking about our manufacturer's agent, not our distributor agent. We rarely, if ever, have any correspondence directly with our distributor agents.

Q. Does he have authority — these manufacturers' agents—have authority to delve into the market and determine what market conditions are and report to you and you rely upon their reports made under such circumstances?

A. They not only have the authority, but it is on our direct demand that they do so.

Q. That they find out and keep up—keep abreast with competitive conditions in the various markets; is that correct?

A. That is correct.

Q. And know what is going on?

A. They are supposed to know what is going on.

Q. And what competitors are doing about prices?

A. That is correct.

Q. You ask them to do that?

A. We do.

Q. Instruct them to do it?

2495 A. That is correct.

Q. And they do it?

A. They do it.

Q. And there are no exceptions to that?

Mr. Stewart: No exceptions to what? I object to that.

Q. To such instructions to manufacturers' agents? In other words, you do not except any particular manufacturer's agent from those general instructions?

A. We do not.

Q. Now, if one of these agents reported to you that a wholesaler or a jobber handling conduit by—manufactured

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by someone else was making a quotation on a specific job at 5 percent below the card prices, that wouldn't inform you as to whether the jobber or wholesaler making the quotation was taking the whole 5 percent from his so-called compensation or whether the manufacturer had made any change in his card price to the—or net price to the jobber or wholesaler; would it?

A. That is correct.

Q. In other words, you don't know?

A. Don't know.

Q. And the only way you would have of finding that out would be by the manufacturer reporting to you what his sales had been, as to whether or not they were on

2496 the card or off the card?

Mr. Stewart: Now, I object to that. You mean what you say, the manufacturer or the manufacturer's agent.

Mr. MacIntyre: I am talking about the manufacturers now.

Trial Examiner Norwood: Objection overruled.

A. If there ever was a case where the manufacturer did report to us what he was doing, then, your question is correct.

By Mr. MacIntyre:

Q. That would be the only way of your ascertaining it?

A. That would be the only way.

Q. Your freight rate compilation which you identified for us in Chicago is in evidence here—

Mr. Stewart: Pittsburgh, you mean.

Mr. MacIntyre: Pittsburgh.

By Mr. MacIntyre:

Q. —is in evidence here as Commission's Exhibit 700. You recall that compilation I showed you in Pittsburgh?

A. If I recall, Mr. MacIntyre, we did not have those—only the current one. If you refer to the current one, yes.

Q. This was one of the more recent ones—

A. Yes.

Q. —I believe that I showed you there.

A. That is correct.

2497 Q. Now, you know that in such compilations that fractions of cents less than one-half are dropped in determining and stating what the freight rates are for the conduit?

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A. I think that is correct. Let me look.

(Referring to records.) That is correct.

Q. And that fractions just beyond the one-half cent are carried over to a full one cent, that is, to the next full cent, which makes an addition in order to have it stated in terms of full cents per hundred pounds; is that correct?

A. I can't correctly answer that. It is my recollection that in every case we go back. If it is under a half cent we absorb that fraction, and if it is from a half cent to whatever fraction you want—we will use seven-eighths, for example, we drop to the half cent. We do not, to the best of my knowledge and belief, add on to a freight rate.

Q. Do you know what is done in that respect, Major?

A. I do not. I would have to take it up with my traffic manager.

Q. You have your freight rate compilation there?

A. I have it here. It shows half and even fractions of a cent. My recollection is that we absorb that part of the fraction, but, as I say, we don't personally draw these up, and I would have to ask my traffic manager how he does it, but that is my recollection, that we absorb the fraction.

Q. You use your freight adder in conjunction
2498 with that freight rate compilation in determining what the freight rate is for a hundred feet instead of per hundred pounds. Is it your testimony that you do not add that fraction in order to get to the next full cent?

A. My answer to your last question is the same as the one before. To the best of my knowledge and belief, we absorb any fractions between the half and the—and the whole, and we absorb any fraction between a whole and a half. Everything from 10 cents to 10⅜ths would be 10 cents—10 and ⅜ths would be 10 cents. Everything from 10½ to 10⅞ths would be 10¼. I am quite certain that that is the way it is figured.

Q. In other words, it is your belief that it is done in no other way through your compilations?

A. That is my belief.

Q. You do not know of any other way it is done?

A. I do not. If it is my belief, I naturally could not know of any other way.

Q. Do you know whether or not that the methods used

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in calculating freight rates and in stating them in this compilation differs in the matter of handling fractions from the method used by freight rate agents who compile tariffs for the railroads?

A. Well, now, I have no direct knowledge of how a freight agent compiles anything. I have never had
2499 any dealings with them, so I do not know how they arrive at rates.

Q. On direct examination you testified that this Transportation Committee of the Rigid Steel Conduit Association, Mr. Kim, Mr. Welch, Mr. Matthews, compiled freight rates which have been published for the Association and took the correct rate. One checked against the other for the purpose of being sure that they got the correct rate.

Mr. Stewart: I object to that as not being a correct statement of the testimony of the witness. I therefore insist that the record be referred to for the correct testimony. That isn't what he said. He didn't say that Mr. Kim and Mr. Matthews and Mr. Welch compiled freight rates. What he said was they were there, where there was a question about the correctness of the freight rates, to determine which was the correct rate, is the way I recall it.

Trial Examiner Norwood: Isn't that substantially what counsel incorporated in his question?

Mr. Stewart: No. It seems to me the implication of the question is that this committee compiled the freight rate schedules. They didn't do anything of the sort, as I understand it.

Mr. MacIntyre: Well, we will not quibble over the term.

By Mr. MacIntyre:

Q. Whatever they did in selecting and being sure
2500 that the rate selected was the correct rate which was later used in the compilation, and about which you have testified on direct examination, would you say that they used the method of the railroad—the agent who had compiled tariffs for use by railways in the handling of fractions, or whether they departed from that method?

A. Mr. MacIntyre, I—I am not clairvoyant. I have no idea what anybody else does. I have never had anything to do with the compilation of these freight rate bulletins. They are submitted to me by our traffic man-

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ager, and he says, "I have checked these with the books." That is as far as—I couldn't any more read a freight tariff and find out what the rate is than I could make a Swiss watch. (Laughter.)

Q. Then do we correctly understand your testimony when you appeared in Pittsburgh, also testifying here on direct, and at this time, to mean that you do not know whether the freight rate compilation of your company, which is in evidence here, was arrived at in the same way and, therefore, shows no difference in freight rates than the freight rate compilations used by other companies?

A. I believe I testified at Pittsburgh that our traffic manager attempted to get hold of the compilations of some of our competitors and check that compilation with his compilation, and in case they didn't agree he went to the freight rate—the freight—oh, what do you call them,—

2501 Mr. Stewart: Tariffs.

A. —these rate books, classification books, for the rates—to determine whether he or the other man was correct. There should be no difference. If a man takes a rate out of a book and transfers it from a book to a sheet and it is a Government-ordered rate, two men with average intelligence should be able to read it the same.

Q. Well, how, or—strike that.

What was the basis for the statement you made on direct examination that there is no difference in the compilation of freight rates, that is, in the rates included in your compilation of freight rates, from those included in the tariffs of the railways?

Mr. Stewart: I object to that. It assumes that he made that statement on direct, and he did not.

Trial Examiner Norwood: Did you make that statement on direct?

The Witness: I think I did. It is a correct statement of fact. I still make that statement.

Trial Examiner Norwood: Objection overruled.

Go ahead.

By Mr. MacIntyre:

Q. What was your knowledge that you need as a basis for making that statement, Mr. Quinn?

A. Well, as an executive of a company I am

2502 supposed to know what my employees do, and I have

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seen our traffic manager preparing these, and I have watched him prepare them, and I can't conceive of his—unless the human element which is always present—unless the human element where a man made an unintentional mistake, I can't conceive of how a trained traffic man could copy from a classification schedule to a sheet of paper and not have it the same.

Q. You told us just a few minutes ago, though, that you did not know what method was used in the use of the handling of these fractions, and as to whether or not it was different from the method used by the agents who compiled the tariffs for the railway.

A. I testified then and I testify now that I don't know how our traffic manager—and he is an employee of mine—how he arrives at that. To the best of my knowledge and belief, the way I testified is what is done. Now, if you wish to call him and ask him he can tell you, but I only know in a general way how he arrives at these, and that is my understanding.

Q. If you don't know the method he uses how do you know that the method he uses is a correct one so as to make the rates the same as those that are in the tariffs used by the railways?

A. The man has his classification; he copies from here to here; he is a trusted employee of the Enameled Metals Company; and we would not want him to put out
2503 a rate that was incorrect, and—and either deprive the customer of the advantage of the correct rate or deprive the company of their just return.

Trial Examiner Norwood: Did you verify those? Do you know what the rates were?

The Witness: Personally?

Trial Examiner Norwood: Yes.

The Witness: I did not. I testified to that.

Trial Examiner Norwood: You testified as to what was told you; is that right?

The Witness: Yes.

By Mr. MacIntyre:

Q. And that is all you know about it?

A. That is all I know.

Q. You told us on direct examination that it was not the desire of a jobber or wholesaler to buy f.o.b. mill; that they desired to buy on a delivered basis. Do you recall that?

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A. I didn't testify to that at all. I said I couldn't understand why any sensible jobber would buy f.o.b. mill. I testified that 80 per cent of our customers bought delivered.

Q. And you said that you couldn't understand that, because it would be a disadvantage to them?

A. That is correct.

Q. What is that disadvantage?

2504 A. The man that buys f.o.b. mill pays the freight. You might—you might ship a carload of freight on the 25th of November, December, or any month you take, which would be the first fiscal day of the new fiscal month. That would arrive at any ordinary point in the United States, except the Pacific Coast—that would arrive inside of a week. Before he could obtain that material he would have to pay the cash to the railroad for the freight. When he buys it delivered we prepay that freight. He doesn't pay us for that material until the 15th—in the case of the 25th day of November he doesn't pay us for that material until the 15th day of January, and he gets 7 weeks' use of our money for freight.

Trial Examiner Norwood: We will have a five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. What other disadvantages would a jobber experience, a jobber or wholesaler, in buying f.o.b. mill as against buying delivered?

A. I do not recall any other advantage—disadvantage. There might be one additional disadvantage, which would not be a terrible factor, but it would be a factor. In the case of the man that buys delivered you are responsible for the delivery of the goods to him in

2505 first class condition, and if there is any claims necessary to be filed with the railroads you have to file them.

The man that buys f.o.b. mill, he assumes all responsibility from the time that is loaded at your mill, and if it arrives in a damaged condition he has to file the claim with the railroad and wait for his money. But that is not a major factor.

Q. Now, in computing the prices which you charge your wholesalers and jobbers, you have not been unmind-

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ful, nor have you ignored, the cost to you in assuming what costs are involved in serving your jobbers and wholesalers on a delivered basis over and above what they would be if you serve them on an f.o.b. mill basis, have you?

The Witness: Will you read that question?

Trial Examiner Norwood: Read it.

(Question read.)

A. Well, if it was possible for us to determine our own price of goods in every case, we naturally have to take into consideration all of the costs of doing business; but in the majority of the cases, since I have been in the business, the price is determined by somebody else, not by us.

By Mr. MacIntyre:

Q. Somebody else in the manufacturing end?

A. That is right.

Q. And do you know whether or not that they
2506 ignore the costs of doing business—that is, the increased costs of doing business on a delivered basis over and above the costs of doing business on an f.o.b. mill basis in the making of price quotations to jobbers and wholesalers?

A. I haven't the slightest idea how they operate, although I have seen some of the prices that have been brought out that seem to have ignored everything including common sense.

Q. And some of those were in late '38, about the time you took this contract on the Social Security Board Building?

A. No. The most severe drop that we ever had in the conduit business was, in our case, the 17th of March, 1936, because it was issued from my house, because our plant was under water, under flood, and from that time on we never have been able to get back the price that we obtained previous to that date.

Q. You think that in the issuance of that card during March, 1936, just absolutely ignored costs of all kinds?

A. I can't conceive of any other condition.

Q. But except for that instance, and possibly this situation in late 1938, obtaining about the time that you took the contract on the Social Security Board Building in Washington, you do not know whether or not manufacturers ignored—

A. I haven't any idea.

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Q. Can you cite to us at this time any customer of yours who buys rigid steel conduit for use, as dis-
2507 tinguished from resale, and who buys or asks to be quoted on a delivered price basis?

Mr. Stewart: You mean can he give you the names of the customers?

Mr. MacIntyre: Yes.

By Mr. MacIntyre:

Q. Just cite them into the record.

A. You mean ordinary customer of ours that buys outright?

Q. Yes.

A. And asks to be quoted on a delivered price? Is that your question?

Q. Yes; buys for his own use, not for resale.

A. Buys for his own use?

Q. Yes.

A. Commonwealth Electric of St. Paul.

Q. Any others?

A. Harry Lang in Buffalo—H. Lang Company in Buffalo.

Q. And where do they use conduit?

A. The Commonwealth Electric—

Q. I am talking about Lang.

A. Lang runs a very large motor repair business in Buffalo, and he uses the conduit primarily in his industrial work, both the repairing of electrical equipment and the installing of electrical equipment in industrial plants.

Q. Does a jobber or wholesaler handle those two
2508 accounts for you?

A. No. They handle it themselves. They are the so-called combination type of jobbers.

Q. Any others that you can name who take on a delivered price basis, or ask to be quoted on that basis, and who use conduit?

A. And buys direct. Not offhand I can't recall.

Q. How many customers do you have, that is, total number of customers, that buy conduit?

A. Both consigned and—

Q. Yes.

A. About 300.

Q. What is the difference between a jobber and a manufacturer's agent, to your way of thinking?

A. A manufacturer's agent is in many cases an in-

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corporated company, in other cases a partnership, in other cases an individual, who is merely a wholesale selling agent for types of goods.

We who are small concerns, who cannot afford to maintain our own men, we have to turn into the territory to find the available experienced men to sell our goods. The sales of our product would not be sufficient to maintain this office, so they in turn sell wire and boxes and any number of different articles, all on commission.

2509 They do not handle the goods. They are not allowed to bill the goods. They merely transmit to us the orders of the jobbers or the distributor agents, and we ship it to the jobber or distributor agent. We bill the jobber or distributor agent. We collect from him, and once a month we pay the manufacturer's agent for his services. The jobber or distributor agent maintains a mercantile place of business. He has a large warehouse, or he should have. He has show rooms, counter service. He runs trucks. He travels salesmen—

Trial Examiner Norwood: I think that that covers that question.

By Mr. MacIntyre:

Q. Does he also do wholesaling and jobbing business?

A. Wholesaling and jobbing? Yes, sir.

Q. And in the product you sell.

A. That is right.

Q. How many manufacturer's agents do you have, as distinguished from your jobbers and wholesalers?

A. I think 18.

Q. Well, you need not take the time, Major, to get their names, unless you have a list of them.

A. I am not sure whether I do or not. I am just going to see.

I can recite them, however, if you want to know the names pretty well. This would have to be collected. I have a list here, but there have been some changes.

2510 Q. What is the date of that list?

A. This list is not dated, but it would be about 3 years old.

Q. Would you mind giving us the names of those—a dozen or so, and the addresses.

A. There seem to be 16. You want the present agents or the agents as appear on this list?

Q. On that list.

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A. Well, you say only half a dozen?
Q. All of them. All 16.
A. They are as follows:
F. J. Airey Company, 1855 Industrial Street, Los Angeles, Calif.
L. A. Doxsee, 815 South Eleventh Street, St. Louis, Mo.
Electrical Sales Company, 111 Cheapside, Baltimore, Md.
Walter I. Ferguson, 800 Dwight Building, Kansas City, Mo.
Fulwiler & Chapman, 314 Luckie Street, Atlanta, Ga.
Walter P. Kohler, 209 North Third Street, Philadelphia, Pa.
Maurice C. Lauer, 236 Putnam Street, Scranton, Pa.
C. G. Lifka, 13337 Hampshire Street, Detroit, Mich.
McKinley-Mockenhaupt Company, 626 West Jack-
2511 son Boulevard, Chicago, Ill.
R. W. Mitscher, Ellicott Square Building, Buffalo, N. Y.
Ben B. Moore, 106 Third Avenue, North, Minneapolis, Minn.
C. C. Pierce Company, 241 Purchase Street, Boston, Mass.
David D. Achneider, 82 Kenyon Building, Louisville, Ky.
Fred E. Staible, Inc., 2356 Blake Street, Denver, Colo.
Milton G. Smith, 295 Madison Avenue, New York City.
J. J. Winer, 4222 Woodward Avenue, Detroit, Mich.
Q. So that is the list as of about three years ago?
A. That is correct.
Q. Now, referring to Respondents' Exhibit 59, is the compensation in—the percentages in the column entitled "Compensation to Distributors" what you give the manufacturer's agents?
A. No. They get 5 per cent beyond this.
Q. And this is to the jobbers or wholesalers?
A. That is to the jobbers or wholesalers.
Q. To whom the manufacturer's agents make sales for you?
A. The manufacturer's agents get 5 per cent of what the jobber pays.
2512 Q. Do you know of any manufacturer of rigid steel conduit who operates on any different basis than you—
A. Several of them.

Q. —in the handling of manufacturer's agents?

A. Several of them.

Q. Who?

A. National Electric Products. They maintain their own sales force in most parts of the country. I believe they do have one or two manufacturer's agents.

Q. As to those manufacturer's agents they have—

A. I haven't any idea what their contract calls for. The Fretz-Moon Company, which has entirely their output through one concern, and I—well, you can ask Mr. Barton when he testifies. It has always been my belief that they have no control over the manufacturer's agents or their general agents.

Q. Well, once that you reach the sale made by these manufacturer's agents of yours and your competitors, do you know of any difference in the method of selling from there out to the salesmen and jobbers and consumers as between you and your competitors?

A. And the other concerns and their competitors?

Q. Yes.

A. I would answer that that is correct, with the possible exception of the General Electric and the Gen-
2513 eral Electric Supply Corporation. I haven't the slightest idea what their intercompany relations are.

Q. You say there is no difference as far as you know as to the others?

A. That is right.

Q. Now, reverting to this contractor-jobber problem, you told us on direct that you did not sell contractors; that it was your practice not to sell them. Why is it your practice not to sell them?

A. Because the majority of the electrical contractors in the ordinary years have not sufficient capital to warrant the extension of credit. In the contracting business, based on my experience, there seems to be a method of incorporation so as to cover some individual job, and if they become involved and cannot pay their debts they simply wipe that company out, and they start next week with a company of a similar name and start all over again.

Q. Well, if you sell them so that the credit is not a problem, are there any other reasons why you would not sell them?

A. There is no reason except that we are committed to a jobber sales policy.

Q. And that would—

A. Preclude the sale to contractors.

Q. On direct you testified considerably about the employment of A. Penn Denton.

2514 A. Yes, sir.

Q. Do you still have him employed?

A. No, sir.

Q. When was it discontinued?

A. When the Rigid Steel Conduit Association discontinued, on May 31, 1940, I believe is the date.

Q. Is it your testimony now that after June 1, 1940, A. Penn Denton did not render you any other service?

A. No, sir; he did in one case.

Q. What was that?

A. The International Brotherhood of Electrical Workers at Tulsa appealed to me as a closed shop of the I.B.E.W. to send Mr. Penn Denton, as the representative of our company, out to Tulsa to attempt to defeat some changes in the municipal ordinance of Tulsa, and, as you know, today if you are a closed shop you sometimes are not running your business. So we employed Mr. Penn Denton. That service lasted about two or three weeks, and we have had no dealings with him since, nor no dealings before, from the time he left the services of the Rigid Steel Conduit Association and that one time that he went to Tulsa.

Q. And when was he first hired by you?

A. I think 1933.

Q. He was in the employ of the Rigid Steel Conduit Association from 1933 to 1940?

2515 A. Seven years; that is right.

Q. And in rendering this service out in Tulsa he rendered that for more than one manufacturer?

A. The service that he rendered—the benefits of the service that he rendered accrued to every manufacturer of rigid conduit.

Q. That is, to you and your competitors?

A. That is right.

Q. And were there any direct payments made to him for that other than yours?

A. You would have to ask him. I know we paid him, and I do not know whether anybody else paid him or not.

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Mr. Penn Denton is now—I believe his title is Commissioner of Electric Light & Power of the City of Kansas City, or head of the Inspection Bureau of the City of Kansas City. He has an official position under the city government of Kansas City, Mo.

Q. What would preclude you from having your jobbers and wholesalers and manufacturer's agents, or employees of them, from investigating specific job contracts in localities in which they are located at the time that they make the sales and following it up?

A. There would be nothing to preclude it, because that is exactly what they are supposed to do. But when a man is hungry he is not always particular about what he
2516 reports, and there have been many years between 1929 and 1939 when the manufacturer's agents practically starved to death, and it was their indoor sport to attempt to get every contract and pad it, and everything else that they could, and so there was no use asking them to investigate something that they should have investigated before they sent the contract in.

Q. Well, if you are willing to accept a contract from one of your contractors or wholesalers or manufacturer's agents at the price that you instructed him to accept the contract at the time that it was out for handling, what disadvantage—

Trial Examiner Norwood: Finish your question.

By Mr. MacIntyre:

Q. —what disadvantage as to that contract do you suffer if you find that the man does not use the conduit where you thought it was to be used? You get your money out of it, don't you, that you thought that you would get?

A. And you want to know what disadvantage I would suffer?

Q. As to that contract.

A. As to that contract.

2517 Q. Just looking at it.

A. Looking at it, a man comes in with a contract —may I cite one particular contract?

Trial Examiner Norwood: Yes.

A. The Metropolitan Life Insurance Company built a large housing development in New York. The original contract called for 9,000 tons. There developed a labor

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fight in connection with this contract, and the price was finally 7½ percent below the current card. Now, that was a long drawn-out building program that lasted for more than 2 years. Now, if we did not police that contract and see that every foot that went on that job that was shipped actually went on that job, the jobber that was buying that material for that job would have an advantage of 7½ percent in the purchase of that material and could then go out and demoralize our market, the prices for which were more or less established to the condition of two years later. And for that reason we must police contracts.

When we take a contract we provide for that contract. We don't enter into a contract that is going to have any backwash that ruins our business, collectively and in abstract cases, over a long period of time.

Q. I am talking about these duplication of contracts now, Major. Why, if you did not serve the contractor with any more conduit than you thought you were going
2518 to serve under that particular contract,—why would it be a disadvantage to you as to that particular contract if someone else merely agreed with the same man to serve him the same amount of conduit?

A. Well, Mr. MacIntyre, I happen to be a Canadian and I was raised in rather strict ideas. I do not want to be a party to a contract that is not genuine, whether it hurts us or helps us.

Trial Examiner Norwood: But he is asking you now would it hurt you if you use the same material on a different job from the one specified in the contract.

The Witness: It would not hurt us, providing the price was the same at the time it was used on another job; but if there had been an advance in the price of material in between the time that duplicated contract was signed and the time the subsequent job began, then it would hurt us because it would be selling to the man fraudulent material at a lower price.

By Mr. MacIntyre:

Q. But you would be getting from him on that contract the same amount.

Mr. Stewart: I submit, Mr. Examiner, that this has been gone into backwards and forwards, in and out, and this is so obvious, this question that is coming, that I think he should put a stop to it.

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The Witness: I would like to answer that addi-
2519 tional question.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. But on that contract you would get what the contract called for that you entered into with the man.

A. But not at the time we anticipated, because if a man contracts with us for three cars for a frame house between Ninety-first Street and the Drive, we have ways of knowing how long that building will take to be erected, and if the contract is duplicated and there is three of us have that contract, obviously the contract is drawn out for months and months beyond the actual completion date of the job for which it was signed for, which is a distinct disadvantage to us.

Q. And does that apply as to contracts that contain dates that you do not cover the buyer?

A. Our contract has always had a time limit, and that time limit is extended at our discretion. Now, your theory as you are compounding here—

Trial Examiner Norwood: Wait a minute. I do not think you need to discuss it.

Mr. MacIntyre: I would like for the question to be—

The Witness: Haven't I answered it?

Trial Examiner Norwood: I think you have.

Mr. MacIntyre: May we have the question and the
2520 answer?

Trial Examiner Norwood: Read the question.

(Last question and answer read.)

Mr. Stewart: Do you want any more?

Mr. MacIntyre: I do not think it is answered, but I will go on.

By Mr. MacIntyre:

Q. You told Mr. Stewart on direct examination that these specific building contracts were nothing more than options. Do you recall that?

A. That is correct.

Q. Well, if you desired anything more than an option in the form of these, why didn't you have Mr. Blake when he prepared these to make them in the form of a binding form of contract instead of an option form of contract?

A. The contract is a binding form of contract, but the

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treatment of the contract by my competitors makes it an option.

Q. And you treat it the same way?

A. I can't do any better than my competitor.

Q. You do not treat it any differently from your competitor, do you?

A. I do not know how they handle their contract.

Q. You just stated to us—

A. I said I can't treat it any differently, but I
2521 do not know how each and every one of them treat it.

Q. You do not try to treat it any differently, do you?

A. No.

Q. Have you attended all meetings of your competitors, representatives of your competitors, which were attended by Mr. M. B. Austin of the M. B. Austin Company?

A. I never attended a meeting with Mr. Austin, and the limit of my acquaintance with Mr. Austin was some 15 years ago they put him out of a hotel room at White Sulphur Springs and he had to have some place to dress when he came back from the golf links, and he used my room to dress. That is the absolute limit of my acquaintance with Mr. Austin.

Q. And how long ago is that?

Mr. Stewart: Fifteen years ago.

A. Fifteen years ago.

Q. Have you attended all meetings of representatives of your competitors which were attended by Mr. J. A. Hawks of the Triangle Conduit & Cable Company?

A. I have not, because I have not attended every meeting. I assume that in this question you are referring to the actual meetings of the Rigid Steel Conduit Association. Is that correct?

Q. Of the Association, that is, of the representatives of your competitors, whether they were attending Association meetings or whether they were attending so-
2522 called industry meetings.

A. The established meetings?

Q. Either kind.

A. Well, I do not want your question to imply that we do not have meetings that are not established. I have not attended all the established meetings, and I never attended any spurious meetings.

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Q. You attended an industry meeting in 1939, in May, when Mr. Morrow was made chairman for the industry, didn't you?

A. That was not a spurious meeting; that was an actual called meeting.

Q. You say that was not an Association meeting?

A. The Association was being abandoned.

Q. But it was the so-called industrial meeting at that time?

A. That is right.

Q. You attended it?

A. I can't tell you. I think I did.

Q. Don't you recall participating at that time—

Mr. Stewart: Just a moment?

What date? I ask what date? 1939 is 12 months.

Mr. MacIntyre: I specified the month of May.

The Witness: Yes, he did. May.

Mr. Stewart: Was it May?

The Witness: Yes.

2523 Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Don't you recall that you participated in the election of Mr. Maurer as the chairman of the industry during the course of a meeting in May, 1939?

A. If there was a meeting in May, 1939, and I was present I participated. I think I was present at a meeting, but my recollection is it was April, not May. But if the minutes show May, that was the last meeting, that was before Mr. Penn Denton left our employ.

Q. Well, do you recall Mr. Maurer having been named as chairman for the industry at a meeting that you attended?

A. May I refresh my mind from that minute?

Trial Examiner Norwood: Certainly.

The Witness: Let me see that, Mr. Stewart.

Mr. MacIntyre: What is the number of that?

Mr. Stewart: I don't know.

Mr. Cleveland: Respondents' Exhibit 49.

A. I attended the meeting part of the time. I wasn't there during the entire meeting.

Mr. Stewart: Now, if you will look at the back of the minutes you will see the subject he is talking about.

(Discussion off the record.)

Q. So, you would say now that any other meetings of

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representatives of your competitors, as meetings of
2524 the industry distinguished from meetings of the Association, and at which Mr. M. B. Austin might have attended, you would not have been present; is that correct?

Mr. Stewart: Now, I object to that. The witness has very plainly said he met Mr. Austin once in his life, 15 years ago. He has never seen him since. Now, why haggle over that.

Trial Examiner Norwood: He is cross-examining him.

The Witness: I have no objection to answering that.

A. Mr. Austin never attended a meeting of the Conduit Industry, the Rigid Steel Conduit Association, the Conduit Section, or any other group since I have been a member, for 20 years.

Mr. MacIntyre: Read the question to the witness. I don't think that is an answer to the question.

(Question read.)

Mr. Stewart: Would not have been present.

By Mr. MacIntyre:

Q. You were not present, I will say.

Mr. Stewart: He wasn't there, and if Mr. Austin was he is supposed to know it. I object to that question because obviously he couldn't know if he wasn't there.

Trial Examiner Norwood: I think the counsel has a point there.

2542 Q. Now, at page 2306 of the record you told Mr. Stewart about your meeting Mr. Bedient at Hot
2543 Springs during May, 1938. What kind of a meeting was that at which you met him?

Mr. Bedient was there with his wife, and inasmuch as Mrs. Quinn comes from that same section of the country they know each other, and Mr. Bedient brought his wife up to our apartment at the hotel for breakfast.

Q. Well, is that the May, 1938, meeting of the National Electrical Wholesalers Association that he was attending?

A. Yes, he was attending that meeting.

Q. At the time you met him?

A. Yes. I met him, of course, many times before.

Q. And it was at the time when he was attending the meeting of the National Electrical Wholesalers Association in Hot Springs during May, 1938, that he told you about these matters about which you testified at page 2306 of the record?

A. That is right.

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Q. You don't want anything that you have testified to on direct examination here to be taken as meaning that what you wrote to Mr. Bedient in your letter to him under date of June 8, 1938, now in evidence as Commission's Exhibit 531-A and B, was untruthful; do you?

A. Well, I—I would say it is an exaggeration of the facts.

Q. Well, you don't want to have the record show now that you are testifying that what you wrote him there was untrue; do you?

A. I wish to have the record show that the exact
2544 expressions here are not a correct statement of the fact.

Q. Well, you don't want the record to now be taken as showing any testimony of yours that you wrote something to Mr. Bedient that was not true?

A. I wouldn't—

Mr. Stewart: I object. The witness has already explained what he wants it to mean.

Trial Examiner Norwood: I think he has already explained that.

Objection sustained.

He gave an exact answer there, the same question.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Is it your habit, Major, to misstate matters in letters that you write to people such as Mr. Bedient?

Mr. Stewart: Now, I object to that as a characterization which is not borne out by the record. If he wants to ask whether it is habit to misstate facts in letters to anybody, very well, but to characterize what he said to Mr. Bedient as a misstatement it seems to me is argumentative.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

2545 A. It is not my habit. I may occasionally do it inadvertently or with deliberation.

By Mr. MacIntyre:

Q. You were attempting, through the statements that you made in your letter to Mr. Bedient under date of June 8, 1938, Commission's Exhibit 531-A and B, to influence him; weren't you?

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A. I was trying my best to stop a continuation of some correspondence that had been going on with my agent for some time concerning the operations of some contractor-jobbers in Buffalo, and I was trying to put a stop to it.

Q. Will you please answer the question, Major?

Mr. Stewart: I submit that is an answer.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Stewart: He was trying to tell you what he did, what he wanted to tell him.

Trial Examiner Norwood: Can you answer that "yes" or "no"—

The Witness: I can answer—

Trial Examiner Norwood: —taken in connection with your explanation?

A. Yes. I was trying to influence him.

By Mr. MacIntyre:

Q. Well, these jobbers that approached you at this Hot Springs meeting of the National Electrical Whole-
2546 salers Association, you knew them to be members of that Association and in attendance at its meeting; didn't you?

A. I couldn't say that they all were members. Some were and some weren't.

Q. Can you name anyone that approached you there who was not a member of that Association?

A. No, I cannot state. I could possibly look over the attendance records at that meeting, which is all filed, and check up some that I might have talked to there that were not members, but I can't do it out of my own mind, recollection, today.

Q. You have no recollection of anyone having approached you there who was not a member of the Association; is that correct?

A. Not any direct recollection, no.

Q. Well, any from which you can give us any names today.

A. Not—not without referring back to the printed list of the attendance. I don't happen to have a list of the members of the N.E.W.A., so I don't know who are and who are not members.

Q. Well, you do know as a fact that some of them that approached you there, such as Mr. Drury, were members

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of the Conduit Committee of the National Electrical Wholesalers Association; don't you?

A. I don't believe I testified that Mr. Drury ap-
2547 proached me at that meeting.

Q. I am asking you about a fact, now, Major.

A. But Mr. Drury—

Mr. Stewart: I object to that. The question assumes that Mr. Drury approached him. There is no evidence that he did. If Mr. MacIntyre wants to ask him if Mr. Drury approached him, all right.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Do you know that?

A. I know that the Graybar Electric Company is a member of N.E.W.A., and Mr. Drury is their New York district manager.

By Mr. MacIntyre:

Q. And you saw Mr. Drury at this meeting?

A. I am not certain that he attended this meeting.

Q. What about Mr. Latham?

A. Mr. Latham, I am quite sure his firm is a member of N.E.W.A.

Q. Don't you recall having seen him in Hot Springs on this occasion?

A. I think he was there.

Q. What about Mr. Fife, E. L. Fife?

A. What year is this?

Q. This is May, 1938, Hot Springs.

A. I don't know whether Mr. Fife was there in
2548 '38 or not. I know he was there in '39, but whether he was there in '38 I don't know.

Q. What about Mr. Blue?

A. Who?

Q. Blue, B-l-u-e?

A. You mean Walter Blue of Kansas City?

Q. Yes.

A. I would rather think Mr. Blue was there, because I have never attended a convention that he wasn't there.

Q. What about Mr. Kiefer?

A. I don't know Mr. Kiefer.

Q. Mr. Eiseman, Fred Eiseman?

A. Of Chicago?

Q. Yes.

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A. I think Mr. Eiseman was there. I think he had the next room to mine in the hotel.

Q. Do you recall seeing him and discussing matters with him at the time of the meeting; do you?

A. I remember seeing him. He is not my customer, so I would have nothing to discuss with him.

Q. You at that time knew him to be a member of the Conduit Committee of the National Electrical Wholesalers Association?

A. No. I may have at that time seen the published list. They publish at the convention a list showing who are the members of the Conduit Committee, and if
2549 he was a member at that time and I had one of these pamphlets I would know that he was a member of the Conduit Committee.

Q. Didn't you make it your business to find out who were on these committees when you attended these conventions?

A. I did not.

Q. As a general practice you ascertained that?

A. I had no reason to.

Q. I say, you ascertained it by looking at these pamphlets that were put out at the time of the meeting when you did attend the meeting; is that correct?

A. I don't recall a half a dozen times in my attendance of the N.E.W.A. that I ever referred to who the members of the Conduit Committee were. I had no occasion to.

Q. How did you know who to talk to when you went to the Buffalo meeting in October of 1936?

A. I don't believe I attended any Conduit Committee meeting in Buffalo in 1936.

Q. Just what was it you did attend in Buffalo in October, 1936?

A. I attended the convention.

Q. Of what?

A. N.E.W.A.

Q. National Electrical Wholesalers Association?

A. That is correct.

Q. And who did you see there?

2550 A. Well, I testified at Pittsburgh that I had a bar in my room, and for about 18 hours a day there was a miscellaneous assortment of jobbers in that room. It would be impossible for me to remember everyone, or who I talked to, or who I didn't.

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Q. Do you recall that Mr. Drury saw you then?

A. I don't think that I had any more than a nodding acquaintance of Mr. Drury at that time, because he wasn't our customer at that time.

Q. Do you recall that Mr. Latham saw you then?

A. Mr. Latham is not—has never been our customer, and I naturally have seen him at the convention because in a small hotel, when you are putting 500 men into a small hotel you are bound to see them at breakfast or lunch or some other time. But I don't believe I had a conversation with Les Latham, if that is what you mean.

Q. Do you recall Mr. Eiseman being present at that meeting and seeing him?

A. No, I don't know that Mr. Eiseman was even there.

Q. Mr. Blue?

A. I have already testified that I can't recall attending a convention when Mr. Blue wasn't there. Mr. Blue was not our customer, so I would have no occasion to talk to him other than just to pass the time of day.

Q. In other words, you talked to somebody at 2551 that meeting; you can't tell us who now?

A. I have not testified that I talked to anybody at that meeting, to the best of my knowledge and belief. I talked with my customers at that convention. That is why I go to conventions, to talk to my customers.

Q. Well, from whom, then, if it is now your testimony that you haven't testified here since you have been on the stand that you didn't talk to anyone at that meeting—how, then, do you account for your testimony that you carried a report back from that meeting which you made to a meeting of the Rigid Steel Conduit Association in New York during January, 1937?

Mr. Stewart: I object to that for the reason that it is not a correct statement of the facts in the record. The minutes of January 27, 1937, show that Mr. Quinn made same sort of a statement at that meeting. Now, that is what you are thinking about, and if you will just look at them you will see that you don't understand what took place.

Trial Examiner Norwood: I will ask the witness to tell us what took place.

The Witness: Well, I haven't at this date, without seeing the minutes, any recollection of making a statement at—at a January meeting. I may have made a statement of the—

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Trial Examiner Norwood: Did you make the report that he refers to there?

The Witness: There never has been a report, to
2552 the best of my knowledge, carried back to the Conduit Association from any of those conventions. At least, I have never carried a report, and I have never been authorized to represent the Association. Any report I would make would be my own casual observation.

By Mr. MacIntyre:

Q. It is your testimony now, then, Major, that you have never at any meeting of the Rigid Steel Conduit Association attended by you made any report as to what took place at any meeting of representatives of the National Electrical Wholesalers Association?

A. Meeting as such?

Q. Yes.

A. Meeting as—

Q. Yes. Yes.

A. To the best of my knowledge and belief I have never carried a report of any meeting of the N.E.W.A. meeting as such and carried it back to the Conduit Association.

Trial Examiner Norwood: Have you ever carried any reports of any informal—

The Witness: Yes, sir.

Trial Examiner Norwood: —consultations?

The Witness: Yes, sir.

By Mr. MacIntyre:

Q. Now, what is the difference between formal and
2553 informal, in your mind, in that respect?

A. The only report that I can recall ever making concerning a conference with jobbers was the report of the luncheon held about January 6, 1937, at the Biltmore. I attended because I was a director of the Rigid Steel Conduit Association. I have attempted to testify that I haven't the slightest idea how the people were invited. I was not the party that invited them. At that time Mr. I. A. Bennett was chairman; Mr. H. S. Walker was secretary. Mr. Bennett and I happened to both be staying at the Biltmore Hotel. He called me up and asked me if I would kindly preside at this luncheon, that he was sick and under the care of a doctor and could not preside; and

I did preside, and having presided at this luncheon I reported to the Association what took place at the luncheon.

Q. You knew who those people were who were in attendance?

A. I knew some of them. Some I didn't know.

Trial Examiner Norwood: Have a five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. On direct, Major, you told Mr. Stewart that no buyer would pay more for your conduit than for the conduit of some other manufacturer. Do you recall that?

A. Yes, sir.

2554 Q. From what you have learned in the business have you found that they will pay less for yours than for others?

A. Pay less for ours?

Q. Yes, take yours if you give them a less price than your competitors give them?

A. Well, I will have to answer that with this qualification: If I knew our price to be less than what they have been offered by somebody else, I wouldn't quote them a lesser price.

I will have to answer I don't know.

Q. In those instances where you know that you have quoted a less price than your competitors quoted, haven't you learned that they buy your conduit instead of buying your competitor's of like quality?

A. I still must answer that I have never knowingly quoted a man a lower price than what I believed my competitors were quoting, and if I did quote him a lower price than my competitors had quoted him, I would imagine that he would have broken his neck buying the material. (Laughter.)

Q. But you don't know of any instance where you have ever quoted a price lower than your competitor?

A. I do not.

Trial Examiner Norwood: You mean not if you could help it.

The Witness: Not if I could help it; not with 2555 deliberation.

Mr. MacIntyre: I believe that is all, Major.

Trial Examiner Norwood: Redirect.

Redirect Examination by Mr. Stewart.

Q. Major Quinn, just one or two questions.

You stated in your cross-examination that there were minutes of the Rigid Steel Conduit Association and minutes of the Rigid Steel Conduit Industry. What is the distinction between the two?

A. Since 1940 there has been no Conduit Association, and there has been an occasional meeting of the industry—and there hasn't been any of those in more than a year. Then, of course, there are other industry meetings where the underwriters call us together. The Underwriters Laboratories appoint a committee of members—not members of the Rigid Steel Conduit Association, but members of the industry—and they are supposed to represent the industry in the discussion with the underwriters of the proposed standards and the—and there has been times—and I couldn't tell you the exact dates of them—but there have been times in the twenty-odd years I have been in the business where the underwriters have called us together and sat down and discussed specifications. That would be another occasion of an industry meeting.

Q. Well, the reason I asked that, I notice in the 2556 record some of the minutes are entitled "Rigid Steel Conduit Association" and some are entitled "Rigid Steel Conduit Industry." Now, is that the distinction?

A. That is the differentiation.

Q. Do you know how your manufacturer's agents, based on your experience in business, do you know how they could exist unless they were familiar with competitive conditions?

A. I can't believe they could exist if they did not know what was going on in their territory.

Q. And was that what you meant when you said you instructed them to know what your competitors were doing?

A. Certainly.

Mr. MacIntyre: Could I have the first part of the question?

(Record read.)

By Mr. Stewart:

Q. Now, Mr. Quinn, do you recall a somewhat involved set of questions Mr. MacIntyre asked you about whether if the Government wanted to buy something and did not

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want to buy rigid steel conduit it could buy that material? Do you recall that line of questions?

A. Yes. He stood here and asked me a number of questions.

Q. Now, I should like to ask whether or not there are Underwriters Laboratories' standards for thin wall?

A. There is.

2557 Q. And for the other materials that you were discussing?

A. There is, yes.

Q. With the exception, I take it, of merchant pipe.

A. I do not believe there is any underwriters' inspection of merchant pipe.

Mr. Stewart: Will you excuse me for just about two minutes?

Trial Examiner Norwood: Certainly.

(Pause.)

By Mr. Stewart:

Q. Major Quinn, do you recall the subject of Mr. Frascati's investigation about which Mr. MacIntyre inquired of you? Do you recall his asking about that?

A. Yes, I recall.

Q. I should like to ask what, if any, connection was there between Mr. Frascati's investigation and Mr. Blake's resignation, if you know.

A. None whatever.

Q. What, if any, connection was there between the investigation by anybody connected with the Federal Trade Commission and the dissolution of the Rigid Steel Conduit Association?

A. None whatever, that I know of. I know nothing about that Frascati investigation at all.

Q. Oh.

2558 A. I know there was such an investigation, but I never knew to what extent he examined or what was the result of his findings or anything.

Q. And what connection, if any, was there between the closing of the offices of the Rigid Steel Conduit Association on Forty-second Street and Mr. Frascati's or anybody else's investigation?

A. I have already testified, Mr. Stewart, it was a matter of finances that caused us to close.

Q. Do you recall that there was a problem presented

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to your Association growing out of complaints of the National Electrical Contractors Association with reference to alleged discrimination in this jobber-contractor situation?

Mr. MacIntyre: Now, I object. The matter of National Electrical Contractors Association has not been brought into this examination on cross. It is opening up a new field.

Mr. Stewart: Well, my impression is that Mr. MacIntyre went into the subject of what the troubles were growing out of the jobber-contractor relationship, and I want to show another trouble. However, if he does not want me to go into it, all right.

Trial Examiner Norwood: This witness has been on the stand a week, and I think out of consideration for him we should not go into it.

Objection sustained.

2559 Mr. MacIntyre: I have a further question, Major.

Recross Examination by Mr. MacIntyre.

Q. You just told Mr. Stewart that manufacturer's agents must know competitive conditions in order to exist. Do you recall that statement of yours?

A. Yes, sir.

Q. Do you also contend that they and their principals must know the names of all the sellers of conduit and the particular prices that they quote in order to properly carry on their business?

A. I would say that if you are going to sell conduit you have got to know in a pretty definite way what price your competitors are quoting, and so must your agent in the field, and if you do not know that you are not in a position to quote yourself.

Q. In other words, you not only want to know the prices, but you want to know the names of each of those who are quoting particular prices to particular customers at particular times; is that correct?

A. If I can find that out.

Q. You want to know that?

A. Yes, sir.

Q. And you take means to ascertain such; is that correct?

A. Not very definite means. It is a standing rule
2560 in our company that if our manufacturer's agents can find anybody who has quoted a price to anybody to give us that information.

Trial Examiner Norwood: Now, that original question was about his customers. We are getting back into these manufacturer's agents. I think we are through.

The witness is discharged.

The Witness: Thank you, sir.

(Witness excused.)

Mr. Stewart: Now, sir, I am frank to say that I am going to throw myself on your indulgence. I think we have put in a strenuous five days, and even if I had a witness to go ahead I would urge you to excuse me now until Monday morning.

Trial Examiner Norwood: I would.

Well, there appears to be nothing further.

Is there anything to take up now? There is one little matter that we might settle here, about your subpoenas.

(Discussion off the record.)

Trial Examiner Norwood: There being nothing further to come before the hearing this afternoon, the hearing is now recessed until Monday morning, December 8, 1941, at 10 o'clock.

(Whereupon, at 2:40 o'clock p. m., December 5, 1941, the hearing in the above-entitled matter was adjourned.)

2563 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is now reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., on December 8, 1941.

2574 I. A. BENNETT was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

Trial Examiner Norwood: Proceed.
Mr. Houston: Shall we proceed, sir?

Direct Examination by Mr. Houston.

Q. Mr. Bennett, you are the vice-president of the National Electric Products Corporation?
A. Yes.
Q. How long have you been vice-president, Mr. Bennett?
A. Since January 2, 1926.
Q. Mr. Bennett, as vice-president what are your duties?
A. In charge of sales.
Q. Of what products?
A. All products, including conduit.
Q. Including conduit. Does that include any su-
2575 pervision over the costs and prices—
A. Yes.
Q. —of your products?
A. Yes.
Q. Do you have charge of a sales force?
A. Yes.
Q. Do you have charge of the advertising?
A. Yes.
Q. What did you do before you came with the National Electric Products Corporation?
A. Prior to that time, back to 1904, I was a manufacturer's agent in Chicago. Of that period, from 1905 to 1926, I handled National Metal Molding Company products.
Q. Now, what was National Metal Molding Company, Mr. Bennett?

A. National Metal Molding Company was the original company organized in 1905, whose name was changed later —I think it was after 1927—to National Electric Products Corporation.

Q. As a manufacturer's agent, did you handle the sale of National Metal Molding conduit in Chicago?

A. Yes. That was the first item that I sold for them. As a matter of fact, I made their first sale. They—I have been an agent of the Osborn Flexible Conduit Company, a New York concern, whose vice-president is C. E. Corrigan.

They made a non-metallic conduit known as Flexduct
2576 and had sold that for the Osborn Company for some time. During 1900—early part of 1905 Mr. Corrigan and I had some conversation relative to his trying to form a concern in Pittsburgh to manufacture metal moulding and conduits. Some time later, during the—perhaps the middle of the year 1905, there was a large project up that would require more conduit than had ever been bought in any one purchase before. I felt that I had an opportunity to sell the conduit, and sold the conduit.

Q. Who manufactured that conduit?

Mr. MacIntyre: I object to further questions on this line. We are going in to corporations back 30 years ago who are not Respondents here, and we are unduly taking the time of this witness in covering such ground that is irrelevant and immaterial to the issues here.

Mr. Houston: Well, Your Honor, I take it we are entitled to show the picture in this case. If we are not we do not get a proper picture. Mr. MacIntyre is naturally anxious to cut us off.

Mr. Gilpatric: I want to supplement that by saying that it is charged the Respondents used this basing-point method of pricing by agreement. Now, we have to go back to the historical background to show the natural development, that it was not by agreement or collusion.

Trial Examiner Norwood: I shall overrule the objection and let him proceed. From these questions here
2577 I can see the drift.

Mr. Houston: Would you ask that question again, please?

Read that question.

Trial Examiner Norwood: Read the question.

(Question read.)

By Mr. Houston:

Q. That conduit which you spoke of as going into a big job.

A. The National Metal Molding Company was formed to manufacture the conduit and put up the plant.

Q. What was that job to which you refer, Mr. Bennett?

Mr. MacIntyre: I object. It does not matter where the conduit was used. It has not been brought in by pleadings or by any evidence.

Mr. Houston: I think it is extremely important to show where the conduit was used. Look at your second count.

Trial Examiner Norwood: Go ahead. Overruled.

A. This conduit was used in the original Sears-Roebuck building in Chicago.

By Mr. Houston:

Q. Now, Mr. Bennett, you spoke a few moments ago about having made what you considered to be the first sale of rigid conduit. Am I correct in so understanding you?

A. This was the first sale of conduit for the National Metal Molding Company. Prior to that I had been
2578 selling conduit for the Electric Appliance Company of Chicago.

Q. Now, in speaking of that, it is the sale of Electric Appliance Company of Chicago conduit that you speak of as being the first sale of conduit which you made—of rigid steel conduit?

A. Yes.

Q. Now, Mr. Bennett, would you state how that sale was made, and in particular I ask you was it made on a delivered price basis or was it made on an f.o.b. mill basis?

A. The first sale of electro-galvanized conduit was made by me in Chicago to a contractor in Chicago. The conduit was made in Milwaukee by the American Conduit Company, I think the proper name was. An inventor by the name of Richmondt had devised electro-galvanized conduit. That sale was made f.o.b. Chicago to Kohler Brothers, an electrical contractor.

Q. Did you handle that sale, sir?

A. I did.

Q. Do you know the reason why it was sold f.o.b. Chicago?

A. In those days, as in latter days, conduit was always sold f.o.b. the city where it was used.

Q. Do you know the reasons for that?

A. Yes, very reasonable reasons. If a purchaser could buy conduit freight prepaid, then the purchaser, the contractor, who shipped the conduit to the nearest switch point where the job was located, and not nearest to his
2579 office, would not have any difficulty in obtaining the conduit from the freight agent; but if it was shipped freight collect, he would have to arrange to have the money there to pay the freight prior to taking up the conduit.

Q. In this first sale that you speak of was it your or the manufacturer's suggestion that the conduit be sold on the basis which it was sold, or did that come from somebody else?

A. That was a natural procedure. I was sales manager for the Electric Appliance Company, and the customer wanted his price delivered to the nearest switch track.

Q. Did they ask you for that price on that basis?

A. Oh, yes.

Q. Now, Mr. Bennett, you have stated that you recall the formation of National Metal Molding Company, which was the predecessor of National Electric Products Corporation.

Will you state the sort of conduit which was manufactured by the National Metal Molding Company from the period between 1905 and 1913?

Mr. MacIntyre: I object. We are continuing to drag this out. We are getting into fields that are not germane.

Mr. Houston: Your Honor, I do not propose to go into this at terrific length, but I do thing we are entitled to go into it a little.

Trial Examiner Norwood: I think the counsel may touch on that, connect it up with the price method at
2580 that time, as he did with respect to the previous question.

Read the question.

Mr. MacIntyre: This question goes to a different type of conduit.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

A. Any raceway that encloses wire might be termed a conduit. Prior to 1900 the electrical industry knew only one way in which to safeguard the public from the dangers of electricity, which was insulation, known as the insulation system. The previous conduits—

Trial Examiner Norwood: Now, if you just answer that question directly—

Read the question.

(Question read.)

Trial Examiner Norwood: Now, just state the kind of conduit.

A. Metal moulding, black enameled conduit, after 1908 sheradized conduit—zinc-treated conduit.

By Mr. Houston:

Q. Now, Mr. Bennett, will you state when the—what do you mean by the term "grounding" in connection with the use of conduit?

A. That is a little involved. You have got to
2581 recognize that prior to 1900 all electric systems were insulating systems, and anything that was done to safeguard the public from the hazards of electricity was in the matter of insulation. The previous conduits were of one type or another, but were regarded as insulation. For instance, impregnated paper, paper-lined rigid conduit, wood-lined rigid conduit. About 1900 the electrical industry recognized the necessity for other methods of safeguarding.

Trial Examiner Norwood: I do not think we need to go into the history of this thing.

The Witness: The reason—pardon me.

2583 Trial Examiner Norwood: I am not going into this background unless it gives us some useful information on the issues.

Mr. Houston: Well, Your Honor, it is the background of all the conduit industry. It is a fight between grounding and non-grounding.

Trial Examiner Norwood: That has nothing to do with this case whatsoever.

Mr. Houston: I am disappointed, sir, but I shall abide by it.

2584 Trial Examiner Norwood: Counsel may make his offer of proof on that.

Mr. Houston: Well, sir—

Trial Examiner Norwood: And have his exception.

Mr. Houston: All right.

Trial Examiner Norwood: Go ahead.

Mr. Houston: I offer to show by this witness the history of the development of conduit from the point where the original conduits were non-metallic conductors, based on

the idea that conductors were insulated materials and that the idea of grounding was the new and safe way to handle an electrical wiring system, which was developed and pioneered principally by the National Electric Products Corporation, which is the oldest going manufacturer in the field today. This witness is one of those persons who pioneered its development, and that it was a fundamental basis for any organization of the industry since that time.

I also offer to show that the considerations which influenced this development and which were in the minds of the manufacturers at that date were based on the public safety; that the manufacturer of an inferior product of this sort by any manufacturer of conduit reflected on all the other manufacturers of competing products, and it was absolutely necessary for them to organize and to protect their industry, and that this was the original basis,
2585 and has continued to be the basis, for the organization of the various associations, which have continued to the present date.

Mr. MacIntyre: I do not suppose it is necessary for me to state my objection.

Trial Examiner Norwood: The counsel may show the necessity for standardizing the product.

Mr. Houston: Well, that is what I am leading up to, sir, with the idea of grounding. You see, grounding is the public safety.

Trial Examiner Norwood: Well, we will take his word for it that those—that is, that it was necessary to make these products so as to prevent fire, and he can tell us why it was necessary to standardize. I think he can do that without giving all the history of these particular developments there.

Mr. Houston: All right, sir, that is perfectly agreeable.

Trial Examiner Norwood: And go directly to the point.

Mr. Houston: Would you read the last statement of His Honor, please? Just the last few lines.

(Record read.)

Trial Examiner Norwood: We will have a five minutes' recess.

(There was a short recess taken.)

2586 Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. Houston:

Q. Mr. Bennett, will you state the reasons why it was necessary to standardize the specifications relating to conduit, and in this connection will you discuss what place grounding had in those specifications?

A. Grounding, of course, has to do with fire hazards, but the main point is life. The rigid steel conduit forming a complete system of piping into which the wires are fished, if the insulation fails and the conduit is in contact with plumbing pipe without being grounded or electric fixtures or a cigar lighter or an electric piano, any person touching the metal parts would—the current would go through that person and seek the ground through that person, if there was no other method of getting to the ground. Therefore,—

Trial Examiner Norwood: Well, in cases it might start a fire; would it?

The Witness: Yes; it would also start a fire, but the greatest point is the shock, and was developed in thought by the electrical industry by reason of congestion and the increased use of electricity.

By Mr. Houston:

Q. Now, when did grounding first become per-
2587 missive under the terms of the National Electric Code?

A. 1905.

Q. And when did it become mandatory?

A. 1913.

Q. Now, Mr. Bennett, there has been a reference in the previous testimony in this case to the term "merchant pipe." Will you state whether—what do you understand by the term "merchant pipe"?

A. Merchant pipe is a length of welded tube.

Q. Now, what is the difference between merchant pipe and conduit?

2588 Q. Mr. Bennett, will you state, from the point of view of the safety factors involved, what is the difference between merchant pipe as used as a raceway for electrical wiring systems, and rigid steel conduit?

A. Merchant pipe conducts either air or gas or water. All connections are made with short elbows. The question of surface and the inside is not involved. In electric conduit the wires—the surface must be smooth, the wires

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must be pulled through after the complete installation of the conduit system.

Trial Examiner Norwood: That doesn't affect the safety, does it, the smoothness?

The Witness: Oh, yes. Oh, yes, because then you get into the question of necking, and necking would ruin your system and would be of no benefit to the public or
2589 anybody else.

By Mr. Houston:

Q. What do you mean by the term "necking," Mr. Bennett?

Mr. MacIntyre: I object. This has been covered by Major Quinn. There is nothing new being brought out. It was irrelevant and immaterial even then, and it is now.

Trial Examiner Norwood: Well, he has used this term—

Mr. MacIntyre: It is duplicating.

Trial Examiner Norwood: —And I am going to permit him to define it.

Mr. Stewart: It might be misunderstood on the record.

Trial Examiner Norwood: Yes. Objection overruled.

A. A piece of pipe of a certain diameter, the underwriters' standards permit only a certain amount of that pipe to be occupied by wires. The reason for that is—

Trial Examiner Norwood: Well, we have had that.

A. —in making turns. I want to explain necking.

Trial Examiner Norwood: The difference—

A. Necking. The reason for the term is that in pulling those wires the electrical conductor is soft copper, and if its diameter is reduced then your electric system will not carry the current.

2590 (Documents were thereupon marked for identification "Respondents' Exhibits Nos. 116, 117, and 118.")

By Mr. Houston:

Q. Mr. Bennett, I show you an article marked for identification Respondents' Exhibit 116 and ask you what that is?

A. Flexible steel conduit.

By Mr. Houston:

Q. Mr. Bennett, would you state whether or not that material is used as a competing product to rigid steel conduit?

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A. It is. In the post office of St. Louis no other wiring conduit was used except flexible steel conduit and electric metallic tubing.

Q. Now, Mr. Bennett, will you look at—I ask you, Mr. Bennett, to look in addition at Respondents' Exhibit 26, which has been identified, I believe, as a specimen of armored cable, and state very briefly what the difference between those two is.

A. Exhibit 26 is an armored cable in which the steel is wrapped around the electrical conductors and cannot be withdrawn or replaced. Exhibit 116 is flexible steel conduit which is installed complete in a job in a similar
2591 manner to rigid conduit, connected up with the connectors and boxes, and then the wires are pulled afterwards. In this system the wires can be replaced at will.

Trial Examiner Norwood: Is that smooth inside, that larger case?

The Witness: It is smooth and yet not solid. In the matter of necking, a turn of this pulling the copper wires around that, the wire touches only half the surface that it does in rigid conduit. It really fishes easier.

By Mr. Houston:

Q. Now, Mr. Bennett, I show you an article marked for identification Respondents' Exhibit 117 and ask you what that is.

A. This is a form of conduit made by—from old newspapers, a non-metallic rigid conduit.

Q. Can that be grounded, sir?

A. No. Ungrounded system.

Q. Is that article, Respondents' Exhibit, for identification, 117, a competitor to rigid steel conduit?

A. Very much so.

Q. Now, I show you an article marked for identification Respondents' Exhibit 118, and ask you if you can identify that.

A. Yes. This is a non-metallic rigid conduit made by Johns-Mannville.

Q. And will you state whether or not that material is used as a competing material to rigid steel conduit?
2592 A. Very much so.

Mr. Houston: I offer in evidence Respondents' Exhibits 116, 117, and 118.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: The only objection to those is just adding unnecessarily bulk to the record.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBITS NOS. 116, 117, and 118 were offered and received in evidence.

By Mr. Houston:

Q. Now, Mr. Bennett, does your company manufacture the material shown by Respondents' Exhibit 116?

A. Yes.

Q. Do you know which of the other respondent companies also manufactures this article?

A. In a general way I might miss one or two of them, but I think I can give you a pretty good list.

Q. Would you state which those are, please?

A. General Electric Company, Triangle Conduit & Cable Company, I think Walker Brothers, Conshohocken. It is also made by a number of companies who do not make conduit.

Q. Now, Mr. Bennett, referring to Respondents' Exhibits 117 and 118, do any of the Respondents in this case manufacture—make that product, either of those products?

2593 A. I don't think they do. One, I think, sells it, buys it and sells it.

Q. Referring to Respondents' Exhibit 27, do you know which of the respondent manufacturers makes this product? Is that e.m.t., otherwise known as light wall conduit?

A. Yes, light wall tubing, or e.m.t. conduit. It is made by National Company, the Youngstown Sheet & Tube Company, Triangle Conduit Company, Steel & Tubes.

Q. Now, referring to Respondents' Exhibit No. 26, do you know which of the Respondent manufacturers in this case make that product which, I believe, is armored cable?

A. Armored cable is made by General Electric Company, National Electric, Triangle Electric, Walker Brothers, and about twenty other concerns not manufacturing conduit.

Q. Now, Mr. Bennett, you mentioned the fact, I believe, that National Metal Molding Company, a predecessor to National Electric Products Corporation, was formed in the year 1905; is that correct?

A. Correct.

Q. Now, Mr. Bennett, where was their plant located?

A. At a town called Economy, Pa., later changed to Ambridge, Pa.

Q. Mr. Bennett, I show you a map marked Respondents' Exhibit 30, and ask you if that map correctly shows the location of the plant of National Electric Products Corporation?

2594 Mr. MacIntyre: I object. We have in evidence here this Respondents' Exhibit 30, which shows the location of the manufacturing plants of rigid steel conduit. It is probably relevant for making such a showing, but now counsel is attempting to elicit testimony concerning locations of plants that antedated the locations of—or the building of rigid steel conduit plants in this country in the manufacture of other products. It is irrelevant and immaterial, and I object.

Mr. Houston: Would you read the question, please?

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Do you mean as of the present time?

Mr. Houston: Yes, sir. National Electric Products Corporation was not in existence prior to 1927.

Trial Examiner Norwood: Well, they manufacture rigid steel conduit; do they not?

By Mr. Houston:

Q. Will you answer that?

A. Yes, sir.

Trial Examiner Norwood: Objection overruled.

A. (Continuing.) This map approximates the location of our plant at the present time at Ambridge, Pa.

Q. Now, Mr. Bennett, referring to this same ex-
2595 hibit, Respondents' Exhibit 30, will you look at the lower righthand corner at the legend which purports to state the capacity of the various manufacturers, and will you look at the capacity stated for National Electric Products Corporation in terms of monthly capacity of rigid steel conduit, which is stated here at 5500 tons, and will you state whether or not that is correct.

A. That is correct.

Q. Mr. Bennett, has National Electric Products Corporation, or its predecessor, ever manufactured the raw pipe from which conduit is made?

A. No.
Q. Where have you gotten your pipe?
A. National Tube Company.
Q. And where is it located?
A. They have a plant at New Kensington, Pa., also Lorain, Ohio.
Q. Now, Mr. Bennett, was there any arrangement between National Metal Molding Company, National Tube Company, and Western Electric Company covering the sale of conduit in the period from, say, 1905 on?
Mr. MacIntyre: I object. It calls for irrelevant and immaterial matter. He is talking about arrangements between non-respondents back 25, 35 years ago. What kind of arrangements are they? The question does not inform us.
2596 Trial Examiner Norwood: The question may be approaching that.
Mr. Houston: Well, I will be glad to testify.
Mr. MacIntyre: Any arrangement may be irrelevant and immaterial.
Trial Examiner Norwood: I will hear from counsel.
Mr. Houston: I offer to show by this question, sir, that from the very start of its manufacture by National Metal Molding Company that conduit was sold on a consigned stock basis. The conduit was manufactured; the raw pipe was manufactured by National Tube Company. It was consigned to National Metal Molding Company for fabrication into conduit, and it was further consigned still as a property of National Tube Company to Western Electric Company, who sold the stock to the consumer. This is the arrangement which Mr. MacIntyre is attacking today as being something new, the basis of conspiracy. I want to show that it had its origin years ago.
Mr. MacIntyre: The thing that we challenged is Commission's Exhibits 664, I believe it is, and 666, two copies of the so-called Blake consignment stock agreement form, one of which was used by this company and one of which was used by one of his competitors, both of which, however, were conjured up through collaboration on the part of all of the Respondents and adopted by them as a result of that collaboration. The fact that one of them
2597 might have used some sort of a consigned stock arrangement with its customers many years ago does not answer the issue that we have raised, or the evidence

that we have put in under that issue concerning their collaborations and agreements on the Blake contract which is in through the numbers I have just given you.

Trial Examiner Norwood: If they can prove that this is an old established custom, wouldn't it tend to refute the idea that this was an arbitrary agreement?

Mr. MacIntyre: It does not meet the evidence that we put in, as well as the charges in the complaint that these Respondents got together and agreed on this form.

Trial Examiner Norwood: We can't decide what meets evidence and what doesn't. We just decide tendencies that have to govern us in receiving evidence.

Mr. Houston: I think our friend protested too much, Your Honor. It is an indication that it does meet that point, and that is the reason that it is objected to.

Trial Examiner Norwood: I would not consider that, either, but I shall overrule the objection.

A. Shortly after National went into business they made a consigned stock agreement in conjunction with National Tube Company and Western Electric Company.

Trial Examiner Norwood: When was that, what year?

The Witness: Probably 1907.

Trial Examiner Norwood: You have been selling 2598 on consignment ever since?

The Witness: Yes, sir; and it has been the basis of our—

Trial Examiner Norwood: Entirely or—

The Witness: Entirely.

Trial Examiner Norwood: —partially?

The Witness: Entirely. That—

Trial Examiner Norwood: Did you prepay the freight back there?

The Witness: Yes, sir; and as this consigned stock story grew you can well understand how impossible it would be for us to have 200 consigned stocks scattered throughout the country if we didn't prepay the freight. It is our goods.

By Mr. Houston:

Q. Do you prepay the freight today, sir?

A. Yes, sir.

Trial Examiner Norwood: Would that be any more difficult than just simply consigning a certain amount of stock and letting the consignee pay the freight than if you prepay it?

The Witness: That would divide the ownership, Mr. Examiner.

Trial Examiner Norwood: The what?

The Witness: That would divide the ownership of the conduit.

2599 Trial Examiner Norwood: Well, I was asking as to the difficulty.

The Witness: Well, the difficulty from our point of view is that it is our conduit and we ship our conduit f. o. b. a certain point in the United States, and we didn't want somebody else to partly own it.

Trial Examiner Norwood: Thank you.

By Mr. Houston:

Q. Mr. Bennett, will you state how long that particular consignment arrangement with National Tube Company lasted that you have spoken of that started in 1907?

Mr. MacIntyre: Object to this for the same reason.

(After a pause.)

Mr. Houston: Your Honor, I believe there was an objection to the last question. Has Your Honor ruled on it?

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Objection overruled. I beg your pardon.

Go ahead.

A. I would say between 18 and 20 years.

Mr. Houston: Mark this, please.

(The document referred to was marked for identification "Respondents' Exhibit No. 119-A to 119-D.")

By Mr. Houston:

2600 Q. Mr. Bennett, I show you a paper, which is marked for identification Respondents' Exhibit 119-A to D, and ask you to look at it—well, ask you what this is.

A. This is a copy, or, rather, an original of a letter I wrote on April 6, 1915, and mailed from Chicago on a letterhead of the I. A. Bennett Company, Sales Agents of the National Metal Molding Company, Rigid Conduit Agents of the National Tube Company. In this letter I explained that we have issued a trade card, or price list, also a contractor's price list—card 15. We reprint the card on page 4 of this letterhead, and on page 2 we show

a sample contract blanks, form N-1, carload protection contract; form N-2, deferred order contract. On page 3 we show form N, a sample of protection contract on estimates that contractors make on jobs.

In this letter of April 6 I explain that the card is—

Trial Examiner Norwood: Is that in evidence?

Mr. Houston: No, sir; it is not. This is for identification.

Trial Examiner Norwood: Do not tell us anything that is in it.

Mr. Houston: No.

Trial Examiner Norwood: Just describe it.

By Mr. Houston:

Q. Now, Mr. Bennett, you have referred to pages 2601 B and C of this exhibit as showing certain contract forms. Now, I will ask you whether these are the contract forms which were actually in use and used by National Metal Molding Company and you, as their sales agent, in the sale of rigid steel conduit at the date shown on this letter.

A. Exactly reproductions.

Q. Mr. Bennett, can you state when these forms of contract were first used by National Metal Molding Company and you in the sale of rigid conduit?

A. I do not know whether that form as given there was first used April 6, but we had been using a form of contract, estimate contract and order contract, from the very beginning of our existence, 1905. It was always in vogue.

Q. Were they similar to the contracts which are set forth in the exhibit?

A. They meant the same thing.

Q. And you would say—

A. They serve the same purpose.

Q. They serve the same purpose?

A. They serve the same purpose.

Q. And you would say they were substantially the same?

A. Substantially the same.

Mr. Houston: I offer that Exhibit 119-A to D in evidence (handing to Mr. MacIntyre).

Mr. MacIntyre: May I inquire as to the reason 2602 for the offer, what it is offered for?

Mr. Houston: Well at this point it is offered to show that the form of specific building contract—

Trial Examiner Norwood: I think it is obvious. It is to show that the contracts used for a long time are the ones that he still uses, or did use.

Mr. MacIntyre: They are not the contracts he is using now. That is why I raised the point.

Mr. Houston: Well, we will show, Your Honor, that they are substantially the same. It is only natural that over a period of years it will have some slight changes.

Mr. MacIntyre: May I ask the witness a question or two before it is ruled on?

Trial Examiner Norwood: Yes.

Examination on Voir Dire by Mr. MacIntyre.

Q. Were the changes made in your operation under protection contracts consigned stock agreements that intervened between the date on which you discontinued the use of these forms that are shown by Respondents' Exhibit 119 and the consigned stock form agreement which you adopted after it was recommended by Mr. Blake, Commission's Exhibit 664?

A. This hasn't got anything to do with consigned stock agreements. This is entirely dealing with contractors.

Consigned stock agreement dealt entirely with dis-
2603 tributor agents or wholesalers.

Trial Examiner Norwood: This is what?

The Witness: This is the story of the contracts with contractors, not distributor agents.

By Mr. MacIntyre:

Q. Have you had changes that took place in similar contracts that intervened between the time you discontinued these particular forms and those that you have since used and were using when this case was started?

A. I haven't read this over carefully. I would have to take it and check against what we are using today. But I think the intent and purpose is the same today as it was then. I can make this check for you if you want me to do it.

Mr. MacIntyre: I object to the form in that it has not been connected as showing that it is a part of anything that has been offered or received in evidence here against these Respondents.

Trial Examiner Norwood: Objection overruled. Received as marked.

RESPONDENTS' EXHIBITS NOS. 119-A to 119-D were offered and received in evidence.

Direct Examination (Continued) by Mr. Houston.

Q. Now, you stated, Mr. Bennett, that your ar-
2604 rangement with National Tube Company under which the tube was the—the raw pipe was manufactured by National Tube Company, consigned to National Metal Molding Company for fabrication into conduit, and finally sold through a jobber, continued for a period of 20 years. Am I correct in my understanding of your testimony?

A. No, I think that is incorrect. At the time that we were—at one time, one period—I do not know just how long—the National Metal Molding Company were merely manufacturing agents for National Tube.

Q. Would that be true of this year 1915, which is the date of your letter?

A. Yes, sir. It so reads—the letterhead reads.

Q. Would you know how long after that the similar arrangement continued?

A. I really don't know. I don't know.

Q. It is not that way today? Am I correct in assuming that?

A. That is right.

Q. Now, Mr. Bennett, covering the period which we have been discussing here, we will say, from the formation of the National Metal Molding Company in 1905 until 1915, will you state during that period whether the sales by National Metal Molding Company of rigid steel conduit were made on an f.o.b. mill price basis, or whether they were made on a delivered price basis?

Mr. MacIntyre: That is objected to as immaterial.

2605 Trial Examiner Norwood: Overruled.

A. I have never known a time when the customer did not want his conduit sold f.o.b. where he wanted it.

By Mr. Houston:

Q. And did you comply with his desires in that respect?

A. Yes. Yes.

Q. What percentage of your sales during that period were made on that basis?

A. Well, if I was not under oath I would say probably all of it, but there were some exceptions, not many. We recognized our customers' desires, and we promoted it on that line.

Q. Now, along that same line, will you state whether or not the sales were made on a consigned stock basis or were made direct by the National Metal Molding Company to the consumer?

A. We never sold to the consumer.

Q. You mean you never made direct sales to the consumer?

A. No. No. We did our business through our agents, distributor agents. It is our method of distribution entirely.

Q. And did most of these distributor agents carry consigned stocks?

A. Yes.

Q. Will you state the reasons why you conducted your business in that manner?

A. Well, it is an economic question. We could either bring up our organization to sell direct, or we could
2606 bring up our organization to handle larger contracts only and distribute through distributors. Our policy has been that conduit being a heavy article, wire being a heavy article, never wanted until it is wanted for use, no one ever buys it for looks, or carries stock. There has got to be a demand for it.

Trial Examiner Norwood: Now, you just give the facts of those sales, and I do not think we need to philosophize about the reasons there.

The Witness: May I have the question again?

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Now, you gave as your reasons that it was the demand and the desire of your customer to have it that way.

The Witness: Yes, sir.

Trial Examiner Norwood: I think that is far enough.

The Witness: All right.

By Mr. Houston:

Q. Now, Mr. Bennett, has that method of doing business, namely, on a consigned stock basis, continued to be the method of doing business in the sale of rigid conduit by National Electric Products Corporation to the present day?

A. Yes.

Q. Will you state also whether or not the National Electric Products Company and its predecessor have,
2607 to your knowledge, during the entire period of their existence, sold their conduit for the most part on the basis of delivered price quotations?

A. We have.

Q. Mr. Bennett, does your company maintain a sales organization?

A. We do.

Q. What sort of organization is that? Will you describe briefly what that organization is.

A. Offices in principal cities under direct employment, and also in Chicago, Denver, and Salt Lake City we maintain manufacturer's agencies.

Q. Now, do these salesmen that you refer to make actual sales on which they are paid a commission?

A. They make actual sales. That might be misunderstood unless it was explained.

Q. Will you explain it, sir.

A. We make—our men—the duties of our men are to go out and sell architects, engineers, and contractors. Very often they secure orders direct, which they take to their distributors and ask their distributors to handle.

Q. In other words, do I understand you correctly as saying that the job of your sales force is to get a sale which is given then to one of your distributors for making an actual sale?

2608 A. Correct.

Q. And the distributor is paid a commission for that sale?

A. Yes.

Q. Mr. Bennett, is—

Trial Examiner Norwood: What was the answer to that question?

The Reporter: "Yes."

Trial Examiner Norwood: Speak a little louder.

By Mr. Houston:

Q. Mr. Bennett, is your company ever asked for f.o.b. mill quotations in the sale of rigid steel conduit?

A. Yes.

Q. Will you state how often you receive these and to what extent?

A. It is very seldom and I do not remember names, outside of railroads who haul their own freight.

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Q. Did you ever quote to the Government on an f.o.b. mill basis?

A. Oh, yes.

Q. Have you ever refused to give an f.o.b. mill quotation when it has been asked?

A. We have not.

Q. Now, Mr. Bennett, will you describe the territory over which national sales of rigid steel conduit are made?

A. We sell our conduit in every State of the Union 2609 and territories. We also make sales to Mexico, South America, and the Philippine Islands. I think at one time we printed a catalog in Chinese.

Mr. Houston: Will you mark these for identification.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 120-A to 120-G, and 121.")

By Mr. Houston:

Q. Mr. Bennett, I show you a paper marked for identification Respondents' Exhibit 120-A to 120-G, entitled "National Electric Products Corporation—Analysis of Conduit Sales," and ask you if this document shows the sales of rigid steel conduit by your company in the United States and for what year those sales are shown? (Handing document to the witness.)

A. This first sheet, R-120-A, shows an analysis of conduit sales for the year 1940 in each State and in each principal city. It shows the per cent to the total sale in the United States, and it also shows the per cent in each city of each State.

120-B to 120-G is an analysis of conduit sales in 1940, showing the per cent of the total in the order of per cent that each State has relation to the total 100 per cent.

Q. Mr. Bennett, is Respondents' Exhibit 120-B out of order? Is it not an analysis which is made more 2610 specific in the pages—

A. It is merely a tabulation of the rest of the pages.

Q. In other words, it should properly appear first. It is a summary of all the other pages that you have before you; is that correct, sir?

A. That is correct.

Trial Examiner Norwood: 123?

Mr. Houston: No. This is all the same exhibit, Your Honor, 120, but the summary page is 120-B, which summarizes the other pages.

Trial Examiner Norwood: I will ask the reporter to

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reverse that lettering and put it in the order in which it should be.

Mr. Houston: In other words, 120-B should be marked 120-A and 120-A marked 120-B.

By Mr. Houston:

Q. Mr. Bennett, I call your attention to the fact that apparently one column on each page of this exhibit is covered with a paper sticker. Will you state what was shown in that column before the sticker was put on?

A. Our statistician put on the actual figures, and I objected to them.

Q. Actual figures of what?

A. Of our sales in each State, in each city.

Q. You mean in dollars?

2611 A. In dollars and cents, and I objected to it. I don't see—

Q. Why did you object to it?

A. Well, it is confidential information I don't care to have published.

Unfortunately it shows through these slips, and I would like to do a better job and eliminate it.

Mr. Houston: If Your Honor please, I have photostats of the same thing, which does not disclose that information, and with Your Honor's permission, and with Mr. MacIntyre's permission, I would like to have the substitution of the photostats for the originals.

Trial Examiner Norwood: Yes. Mark the photostats as the others are marked.

By Mr. Houston:

Q. Mr. Bennett, I show you a map which is marked for identification "Respondents' Exhibit 121," and ask you whether this map contains a summary in more graphic form of the information which is contained in Respondents' Exhibit 120.

A. This map is a picture of the analysis shown in the figures, and the figures show the percentage in each State.

Q. And am I right in assuming that the pencil marks shown on this are crossing out the confidential information which you referred to in the prior exhibit?

A. Correct.

2612 Mr. Houston: I offer these in evidence (handing documents to Mr. MacIntyre).

(Whereupon, at 12:17 o'clock p. m., a recess was taken until 2:30 o'clock p. m. of the same day.)

2613 **Afternoon Session.**

2:30 P. M.

Trial Examiner Norwood: Hearing come to order.
Mr. Bennett, take the stand.
I beg your pardon, gentlemen. Mr. MacIntyre has not come yet.
(After a short pause.)
Trial Examiner Norwood: Proceed.

I. A. BENNETT resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Houston.

Q. Mr. Bennett, you have referred to this map, Respondents' Exhibit—
Trial Examiner Norwood: Is there any objection to the proffers there of Respondents' Exhibits 120 and 121, for identification?
Mr. MacIntyre: I sent for the exhibits. They are not in the room at the moment, and as soon as they return I will state the objection to them.
Trial Examiner Norwood: Oh, I see.
Off the record.
(Discussion off the record.)

By Mr. Houston:

Q. Mr. Bennett, the last two exhibits, Nos. 120
2614 and 121, were, as I believe you have explained, an analysis of your conduit sales for the year 1940, and they show sales in various States of the United States. Now, Mr. Bennett, will you state whether the picture shown by that map would be the same for each given year? In other words, were sales made by you in any other States in prior years?

A. Yes. In the States of Texas, North and South Dakota, I think this exhibit showed no sales, whereas, in previous years we may have made sales. The fact of the matter is in the State of Texas we perhaps have made sales every year prior to last year.

Q. Now, Mr. Bennett, it has been testified in this case

that conduit is used as—it is a building material fundamentally; is that correct?

A. Yes.

Q. Now, in what type of building is conduit used?

A. More particularly in the congested districts of any city where many ordinances require rigid iron conduit due to congested districts, being more fireproof and casualty proof.

Q. Is it used to any great extent in residential buildings?

A. Not in the outlying or suburban districts, no.

Q. In a city would it be?

A. Yes.

Q. In a city subject to the municipal codes of which you have spoken—

2615 A. Yes.

Q. —would it be?

A. In the fire districts.

Q. In the fire districts.

Is conduit a part of the electrical contract for a building of the sort you have described?

A. Yes.

Mr. MacIntyre: I object to further questions on this line, as to the manner in which conduit is used. I think it has been more than covered sufficiently.

Trial Examiner Norwood: Read the question.

(Question and answer read.)

Trial Examiner Norwood: Objection overruled.

By Mr. Houston:

Q. Mr. Bennett, are you familiar with the percentage of the cost of a building of the sort you have described that the electrical contract would represent normally?

2616 A. I have a very definite, specific record and statistics covering that subject, but I haven't got them with me and I wouldn't care to guess.

By Mr. Houston:

Q. Well, within what percentage could you state

2617 the—

A. Offhand, I would say 3 percent.

Q. You would say that the electrical cost is 3 percent of the total cost of the building?

A. Yes, sir.

Q. Now, Mr. Bennett, what part of the cost of the electrical contract would be represented by rigid steel conduit?

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A. Half of one percent.
Q. Half of one percent—
A. Probably.
Q. —Of the electrical contract would be represented by—
A. Conduit.
Q. —conduit?
Now, Mr. Bennett, in the course of your business have you had occasion to follow the demand for conduit in building activity throughout the country?
A. Yes.
Q. Are you familiar and can you state the—can you state whether or not the building activity in one part of the country is necessarily accompanied by similar activity in another part of the country?
Mr. MacIntyre: I object. It is getting completely off the line to go into such matters. It is irrelevant and immaterial.
Mr. Houston: Your Honor, I think it is very, very pertinent to this whole thing. Under this second count 2618 the Commission is attacking our whole method of—
Trial Examiner Norwood: Is that the building activities come in response—
Mr. Houston: Yes. I want to show that the building activities in the country, you can't account where they are coming or how they are coming or anything else.
Trial Examiner Norwood: Well, he may give us the facts of his experience.
Mr. Houston: That is what I am asking for.
Trial Examiner Norwood: I don't think he may just sit there and give opinions at all, but if he has any figures on that or any facts, he may tell us about it.

By Mr. Houston:

Q. Well, testifying from your own knowledge and experience, Mr. Bennett, will you state whether or not it is true that building activity in one part of the country is necessarily accompanied by similar building activity throughout the country?
Mr. MacIntyre: I object.
Trial Examiner Norwood: Objection overruled. He may tell us that.
A. I have very definitely seen the time when building activity in New York was at a high point where in the Chicago district we were not doing anything. I have

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2619 also seen the time when the Pacific Coast was very active while the East was not active in building operations. You can develop that by your Dodge reports, records.

By Mr. Houston:

Q. Now, Mr. Bennett, what would you say as to the relation between the points at which there is a demand for conduit and the points at which there is building activity?

Mr. MacIntyre: May I have that question?

(Question read.)

Mr. MacIntyre: Relation as to what?

Mr. Houston: I will withdraw the question.

Mr. MacIntyre: In mileage?

By Mr. Houston:

Q. Mr. Bennett, will you state whether or not in your experience the demand for conduit fluctuates in the same manner that you have described the fluctuation in building activities from one point of the country to the other?

A. Yes, it does.

Q. It does.

In other words, the testimony that you gave to the effect that the building activity in one part of the country is not necessarily accompanied by building activity in another part of the country would apply to the demand for that product, rigid steel conduit?

A. Correct.

2620 Mr. MacIntyre: I would like to ask at this time that after the witness has answered that we reserve argument on his answer for the brief.

Mr. Houston: Well, sir, if that is argument, I misunderstand it. I am trying to get clear what he says. If Mr. MacIntyre wants to cross-examine him on it, that is his privilege later.

Trial Examiner Norwood: Proceed.

By Mr. Houston:

Q. Mr. Bennett, do you recall how long National Electric Products Corporation and its predecessor, National Metal Molding Company, have been selling conduit on a Pittsburgh base?

A. I think the term "Pittsburgh base" perhaps came into our picture when we were taken over by the National Tube Company and became their agents. Just what that

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date was—it may have been 1917—I am not sure. A date is in my mind, but whether it applies or not I am not sure.

Q. Did I understand you to say that it started on the date on which you had the arrangement with National Tube Company?

A. Yes, when we became their manufacturing agent. It could not have been 1917, because you have a document there, an exhibit, that shows it was in effect in 1915. I could not give you the date on that, but that is when we first adopted that policy on freight.

2621 Q. Do you know why you used that method, sir?

A. Well, the industry prior to that had adopted practically every other method of equalizing freight with competition and this is a simple form. Our customers insisted upon a delivered price. We had to find a simple form.

Q. Do you know whether the National Tube Company sold their products on a Pittsburgh base?

Mr. MacIntyre: I object. It is irrelevant and immaterial as to how people in other industries sell their products. National Tube Company is not in the conduit business.

Mr. Gilpatric: Mr. Examiner, the testimony is that this manufacturer started to use the basing point as agent for National Tube. It certainly is of great materiality to the proceeding, since it is charged with having adopted it by agreement and collusion.

Trial Examiner Norwood: To show that they inherited it from the parent company, is that it?

Mr. Gilpatric: From their principal.

Trial Examiner Norwood: Objection overruled.

The Witness: The question, please?

Trial Examiner Norwood: Read the question.

(Question read.)

A. My recollection is that they did, and in taking over the conduit manufacturing business from National

2622 they put into effect their terms.

(Pause.)

Mr. MacIntyre: While we have this lull, I would like to state the objection to the pending exhibit.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: I have no objection to Respondents' Exhibit 121.

I would like to ask the witness a question or two about some parts of the pending offer of 120.

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Trial Examiner Norwood: Well, just ask him the questions in order to determine its admissibility.

Mr. MacIntyre: Yes, it will go to the admissibility.

Trial Examiner Norwood: Go ahead.

Examination on Voir Dire by Mr. MacIntyre.

Q. Mr. Bennett, will you please tell us what these last two columns mean as they appear on Respondents' Exhibit, for identification, 120-B, C, D, E, F, and G?

A. The first column is percent to the United States. For instance, in Birmingham, Ala., of our total sales in the United States it represented 1.7 percent of what we sold in that year.

Q. That is in your sales to the U. S. Government?

A. No, no; entire sales. Not to the U. S. sales, to
2623 all customers.

Trial Examiner Norwood: Including the U. S. Government?

The Witness: Yes. All sales.

The last column has only relation to the fact that—here it says 100 percent. In other words, we sold all in Alabama that we sold in Birmingham, you see. In other words, that 1.7 percent sold in Birmingham represents a hundred percent of all of our sales for that year.

By Mr. MacIntyre:

Q. In the State?

A. In the State, yes.

In California, for instance, the entire State is—this column shows 12.8 percent of our sales of conduit in the United States was made in California. Of that percentage .3 percent was Fresno, 7 percent in Los Angeles, 1.2 percent in Oakland, and so on.

Now, in the last column it shows the percentage sold in the State. This is in the United States. For instance, let us take Fresno. Three-tenths of one percent of all the conduit we sold in the United States was sold in Fresno, Calif.

Now, in the second column it shows that we sold—2 percent of all the conduit we sold in California was sold in Fresno.

2624 Mr. MacIntyre: I have no objection to Respondents' Exhibit No. 120.

Trial Examiner Norwood: Received as marked. 120-A to G, and 121.

RESPONDENTS' EXHIBITS NOS. 120-A to 120-G, and 121, were offered and received in evidence.

Trial Examiner Norwood: Proceed.

Direct Examination (Continued) by Mr. Houston.

Q. Mr. Bennett, is the rigid conduit manufactured by National sold under any trademarks?

A. Yes. We have three active trademarks at the present time.

Q. What are they?

A. The first and original trademark was "Economy Black Enameled Conduit." The second was our zinc treated conduit, Sheraduct conduit. And when we purchased the American Circular Room Company that company had two trademarks, X-duct—

Trial Examiner Norwood: Just describe the marks.

A. —X-duct and Electroduct. When we discontinued the American Circular Room Company we retained the X-duct, so at the present time we have Economy, Sheraduct, and X-duct.

Mr. Houston: Mark these, please.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 122-A to 122-C and 123-A to 123-E.")

2625

By Mr. Houston:

Q. Now, Mr. Bennett, I show you a document marked Respondents' Exhibit 122-A to C, ask you to look at that and tell us if you can what that is (handing document to the witness).

A. This is a consigned stock agreement which we had in effect in 1919. This particular one happens to be between the William Hall Electric Company, a jobber, I think in Dayton, Ohio, and the National Metal Molding Company, Pittsburgh.

Q. Now, I show you an exhibit marked Respondents' Exhibit 123-A to E, and ask you if you would look at that and state what that is (handing document to the witness).

A. This is apparently—this is a rigid conduit consigned stock agreement, dated 1931, between M. D. Larkin Company, successors of the William Hall Electric Company, Dayton, Ohio, on rigid conduit.

Q. Now, referring to Respondents' Exhibit 122-A to C, will you state whether or not this form of agreement was typical of that which was used by your company between 1919 and 1930?

A. Yes. They undoubtedly were all alike typewritten. We did not get around to the point of printing them until I think around 1928 or '29. With the expansion of business they were printed instead of typewritten. I think it is the same thing.

Q. Well, would you state, Mr. Bennett, whether
2626 Exhibit 123-A to E, or in particular referring to 123-A to D, would you state whether or not that is a printed form of consigned stock contract which was in use by your company from 1930 until 1937?

A. It is.

Q. Would you take a look at 123-E and state what that is in connection with that contract.

A. 123-A to E is a letter dated October 13, 1933, signed by H. H. Robinson, vice-president-treasurer, in which he explains—and this, by the way, is addressed to National consigned stock distributors of rigid conduit, meaning that the same thing went to all of them—that we desire to change our wording in our printed form.

Q. And to what change in particular does that relate?

A. This relates to date of settlement of sales from consigned stock for the previous 30 days.

Q. And will you state, Mr. Bennett, the reason why that change was made?

A. Yes. Our other contracts brought a report of sales from consigned stock to the end of the month. To make a report on a consigned stock required inventory of the stock from the jobber's mailing to us and made it too late for us to get in our billing of that consigned stock on that months' sales, so we changed the date of the 25th of the month, which allowed us 5 days before the 30th of the month to get in the—the report and bill is as of
2627 that month. The cash for settlement for sales of consigned stock has been made by the 15th of the month following the date of the sale from the consigned stock and the date of the report.

Mr. Houston: I offer in evidence Respondents' Exhibits 122 and 123.

Mr. MacIntyre: These two documents are objected to as irrelevant and immaterial. They go to practices that are

not brought into issue by the complaint, and are not brought into issue by any evidence we put in.

Trial Examiner Norwood: Objection overruled.

Received as marked.

RESPONDENTS' EXHIBITS NOS. 122-A to 122-C, and 123-A to 123-E, were offered and received in evidence.

(Whereupon, at 3 o'clock p. m., December 8, 1941, the hearing was adjourned.)

2630 PROCEEDINGS.

Trial Examiner Norwood: Hearing come to order.

Pursuant to adjournment yesterday, hearing in Docket 4452 is now reconvened at 10 o'clock a. m., on the 9th day of December, 1941, in Room 332, Office of the Federal Trade Commission, Washington, D. C.

Please note the appearances.

2639 I. A. BENNETT resumed the stand and testified further as follows:

Trial Examiner Norwood: Mr. I. A. Bennett resumes the stand.

Proceed with the examination.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 124, 125, and 126.")

Direct Examination (Continued) by Mr. Houston.

Q. Mr. Bennett, I show you two papers marked for identification Respondents' Exhibits 124 and 125, and ask you what they are.

A. These are copies of advertisements that we ran in trade magazines. We usually advertised in the Wholesalers Magazine and the Contractors Magazine as well as in architectural magazines.

Q. And are those copies of advertisements which
2640 appeared in those publications?

A. Both—yes.

Q. Referring to Exhibit 124, will you state whether or

not that exhibit contains pictures of the products which are manufactured by your company?

A. Yes; wires and cables, and six wiring systems, conduit, flexible steel conduit, armored cable, surface raceway, ungrounded non-metallic tubing, and ungrounded non-metallic armored wire, and also sheetings and various types of uncovered wire.

Q. Mr. Bennett, I show you Respondents' Exhibit, for identification, 126 and ask you what that is.

A. This was a book—a book that was printed at the time of the introduction of N. R. A. as to business policies.

Q. Is it a reprint of—

A. It is a reprint of an advertisement, a large book, four or five times this size that we sent out in 1927.

Q. Who wrote that, sir?

A. I did.

Q. And it was published in this form at the time the N. R. A. came into the picture?

A. The N. R. A. so definitely described the national policy since 1905 that I took occasion to reprint this 1927 print and put it out in book form and say "Is this N. R. A.?" This was sent to all of our customers. Since
2641 1905 we had published our price list and had a policy of adhering to the price list and selling on that price list only.

2642 (A document was thereupon marked for identification "Respondents' Exhibit 127.")

By Mr. Houston:

Q. Mr. Bennett, I show you a paper marked for identification Respondents' Exhibit 127, and ask you what that is.

A. This is a form of sales contract that we used in making contracts, the National Electric Products, with jobbers covering specific jobs on rigid conduit. This contract gives the name of the building, location, name of the architect, and electrical engineer and electrical con-
2643 tractor and the quantities.

Q. And, Mr. Bennett, I will ask you to refer back to Respondents' Exhibit 118 and I will ask you whether Respondents' Exhibit, for identification, 127 is a new form of the contracts which are reproduced on Respondents' Exhibit 119-B?

A. 119-B shows a sample of contract blanks that were

used when the National Metal Molding Company were rigid conduit agents for the National Tube Company, and this new form is the same contract, apparently identical, that the National Electric Products Corporation used, and not as agents for National Tube Company.

Q. Mr. Bennett, will you state whether this was the form of sales contract which was used by your company prior to the date on which the new contracts of 1937 were adopted?

A. Yes. We used this contract on every contract that we took. We did not take any unless they were made out, filled in, signed and approved in this form.

Q. And, Mr. Bennett, on Respondents' Exhibit 119, on page C of that exhibit is a form of sample protection estimate. Now, will you state whether or not during the time when you used the contract identified as Respondents' 127 you used any similar form to that, or how did you handle the situation which is covered there?

A. This protection of estimate was the National Tube Company requirement, and it had to do with pro-
2644 tecting a contractor's bid on a job. It remained in force until the job had been let to some contractor. It was done away with later, and during the period of this contract—

Q. By that, when you say "this contract"—

A. Exhibit 127, we abolished any forms, using only our letterhead. Where we quote a contractor during the existence of this form, this contract, sales contract, we would merely quote the jobber or contractor to cover the details in the letter and file the letter.

Mr. Houston: I offer in evidence Respondents' Exhibit 127 (handing to Mr. MacIntyre).

Mr. MacIntyre: It is objected to as immaterial.

Trial Examiner Norwood: Objection overruled.

RESPONDENTS' EXHIBIT NO. 127 was offered and received in evidence.

I think we should letter those pages. Mark it A, B, C, and D.

RESPONDENTS' EXHIBIT NO. 127-A to D was offered and received in evidence.

(The document referred to, heretofore marked for identification "Respondents' Exhibit No. 127," was re-marked as "Respondents' Exhibit No. 127-A, 127-B, 127-C, and 127-D," and received in evidence.)

By Mr. Houston:

Q. Now, Mr. Bennett, can you state how long this form Respondents' Exhibit 127-A to D, was in use by your
2645 company prior to 1937?

A. It was used continuously until 1937, when we made the new form.

Q. From what date, approximately? Could you state?

A. I haven't the slightest idea. Is that dated?

Q. I call your attention to a notation on 127-D. Does that assist you?

A. Yes. It says "May '30."

Q. May—

A. '30, it was published.

Q. May, 1930, by that you mean?

A. Yes.

Q. 1930?

A. Yes, May, 1930.

Q. Do you know, Mr. Bennett, who got up this form of contract for your company?

A. That is pretty hard to—

Trial Examiner Norwood: Do you know?

The Witness: Yes. I did.

By Mr. Houston:

Q. Now, Mr. Bennett, referring to Exhibit No. 127, and also to the contract forms shown on Respondents' Exhibit 119-B, will you state the purpose for which those forms were used by you, by National, in its business?

A. You are talking now about these sales contracts?

2646 Q. Yes, sir.

A. When a contractor secured a contract to wire a building, he could fill out one of these blanks and specify the quantity of material that he desired, when he desired it, and all of the information. We would accept this contract, and at a later date, as the building proceeded, we would make shipments in accordance with his direction. It was called a material contract.

Trial Examiner Norwood: Well, in substance, it is an option, isn't it?

The Witness: No; it is a direct sale.

Trial Examiner Norwood: Suppose he does not get the bid?

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The Witness: This contract is not used until he has the contract. After the contract—

Trial Examiner Norwood: But that is made out pursuant to a previous agreement for protection at a certain price?

The Witness: No.

Trial Examiner Norwood: Prior to his bid?

The Witness: Well, yes, in a way.

To explain this properly, the contractor bids on a job in common with half a dozen other contractors. One of them gets the job. Now, when they bid they must know the price of their goods, and we quote, using our reg-
2647 ular letterhead.

Trial Examiner Norwood: You undertake, though, to secure him that price for that job in case he secures the award.

The Witness: If he receives the award, then we undertake to sell him at that price.

By Mr. Houston:

Q. And at that point what is done with these contracts, which you hold in your hand?

A. These contracts are sent in, and if approved are then in turn—are the basis of our buying raw material.

Mr. Houston: Would you read that last answer, please?

Trial Examiner Norwood: Read it.

(Answer read.)

By Mr. Houston:

Q. Do you mean to state, Mr. Bennett, that you place your future commitments for raw material in the manufacture of conduit on these contracts which you refer to, which have been executed by your company and the contractor?

A. Yes. Yes.

Q. And do you rely on the truth of the statements which are contained in those contracts in making these commitments for material?

A. We must. They are certified to. We accept
2648 them in good faith. That has been one of the difficulties of the industry, to try and eliminate the fraud from these contracts.

2649 Q. Mr. Bennett, it has been testified in this case that the various manufacturers have had situations

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where contracts had been taken, contracts of the sort you have described have been entered into covering jobs which don't exist; that the amounts stated in the contracts have been—

Mr. MacIntyre: I object to the question being framed and stated to the witness in this way. Mr. Houston
2650 is doing nothing except testifying and then asking this witness if he will agree with the counsel's testimony.

Trial Examiner Norwood: Mr. Houston is trying to save some time on this thing.

Mr. MacIntyre: I appreciate that.

Trial Examiner Norwood: Well, now, state your objection after he completes his question.

Go ahead.

Mr. Houston: I wonder if you would read what I said.

(Question read.)

By Mr. Houston:

Q. —have been overstated, and I ask you whether you have had any similar experiences in your experience with these contract forms in your business as a representative of National Electric Products Corporation?

A. Yes.

Q. Would you state whether or not those things have occurred with frequency?

A. With such frequency that it casts a doubt on every contract we have entered into.

Q. Have you encountered any other difficulties in addition to those I have described in your experience with these contracts?

A. This contract has been used by jobbers to try
2651 and buy on advancing markets stocks which would give them a control of the market. Contractors have bought excessive quantities on these contracts which gave them conduit at a less cost to figure the next job than their competitor.

Now, the manufacturer, they even use this method of sale to his disadvantage. Our difficulty was in maintaining the stability of our own picture, our own prices among our own jobbers, our own customers; it created a loss of confidence in the company, and a loss of business, a loss of friends.

Q. Now, Mr. Bennett, have you made any efforts, you and National, to investigate the accuracy and validity of these contracts to which you refer?

A. This effort, to give you the correct picture, dates back many years where at one time we refused to accept any protection of any kind. We found that that would merely drive us out of business. We attempted individually through—and through F. W. Dodge Company to check our own contracts. We tried three or four outside measures, outside procedures, to try and check the contracts; and that was one of the very principal reasons why the industry, after dealing with—as an association with the secretary, that I demanded that we have counsel to assist us in legally wiping out these illegal contracts.

Q. Now, these investigations that you have referred to, were they made by National on its own behalf and
2652 through its own efforts, or were these joint efforts with members of the industry?

A. We continuously, over a period of years, through our own efforts, endeavored to check these contracts but were unsuccessful. Where we would catch a contractor we would lose a customer; where we would catch a jobber cheating we would lose a jobber, and we sought outside means as perhaps the best way to impartially handle the situation.

Q. Mr. Bennett, did your company use the services of the Organization Service Corporation in checking your contracts?

A. We did.

Q. And was this done on an individual basis, or was this a report which was submitted to all the members of the Association on the contracts of yours which were checked?

A. Oh, no. We did it on an individual basis, and what facts we had checked we wouldn't permit them to be checked by anybody unless it was a confidential return to us solely. We paid for each contract, the cost for checking the contract. Sometimes it was $3, sometimes it was $15.

Trial Examiner Norwood: Well, when you got a report and found out that you were being imposed on through these contracts, would you then cancel the order yourself?

The Witness: Yes. Yes. We had one case where a very much misunderstood situation existed. A very valu-

able jobber who had a contract with us similar to
2653 this for a certain amount of goods to go on a certain job in Boston, in order to try and protect ourselves we followed carload shipments on these contracts by freight tracers, and in this case we found that the carload of material had arrived at a junction point somewhere near Boston and then the routing had been changed by the jobber to Maine, the State of Maine. We rendered an additional bill to the wholesaler for $268, or some similar sum, but we never collected it because it would probably have cost us $10,000 to go up to Boston and sue—and collect.

2655 Trial Examiner Norwood: I think he can ask him as to whether a contract would restrict the price of the conduit. In fact, I will ask him that.

Do you always carry out those contracts with respect to price guarantee; that is, to reduce the price below the contract price when there is a decline in the market?

The Witness: Over many years' experience, Mr. Examiner, we have found that if the price declines the
2656 contractor ignores the contract and goes and buys the goods across the street.

By Mr. Houston:

Q. Well, following Your Honor's suggestion, I would like to ask Mr. Bennett this:

Mr. Bennett, it has been testified in this case that it has been the custom in the use of these specific building contracts that when between the date on which a contract is entered into and the date on which material is called for by the contractor under that contract there is an increase in the price of conduit, the contractor is entitled to take the conduit for the job at the price stated in the contract.

Is that correct, in your experience?

Mr. MacIntyre: Now,—

A. Correct.

Mr. MacIntyre: Well, may I object before the witness answers and have his answer recorded?

Trial Examiner Norwood: Delete that answer, please.

The Witness: I am sorry.

Mr. MacIntyre: The question is leading, it is improper in form, it calls for conclusions as to what legal rights are, a legal interpretation of the contract in question, and furthermore it duplicates the record unnecessarily.

2657 Trial Examiner Norwood: Read that question.
(Question read.)
Trial Examiner Norwood: Objection overruled.
You may answer that.
A. It is.

By Mr. Houston:

Q. Now, Mr. Bennett, suppose that a contract is entered into by you with a contractor on the forms which you have described here calling for a certain amount of conduit for a particular building operation, and suppose also that the contractor has overstated in the contract the amount of the material that is required on the job.

Now, let us suppose also, Mr. Bennett, that there is no change in your price of conduit between the time the contract is entered into and the time the conduit is called for and delivered on the job.

Do you compel the contractor to take the entire amount of that contract even though it be overstated in the contract?

Mr. MacIntyre: I object on the ground that it is immaterial as to whether this witness, for reasons sufficient to himself, wants to enforce contracts which he executes with his customers, that is, under such circumstances, or as are assumed in that question.

Trial Examiner Norwood: He can give us his prac-
2658 tices under those contracts, his method of applying it.

By Mr. Houston:

Q. Do you understand that question, Mr. Bennett?
Trial Examiner Norwood: Objection overruled.
A. I think I understand the question.
We check our contracts, and where there is anything overstated we cut them down, try and deliver the balance, whatever the correct amount is.
Q. Do you force your contractor to take the balance?
A. No. It is impossible. It is impractical.
Q. You said that was impossible. Why?
A. If there hasn't been any advance in price, the contractor isn't buying conduit to stack up and look at, but if the job takes less than he has bought on the contract he is surely not going to take the conduit unless there is some financial gain, and it is this financial gain, this edge, which

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gives him an edge over his other competitors in the territory that makes this contract vicious.

(A document was thereupon marked for identification "Respondents' Exhibit No. 128-A to 128-C.")

By Mr. Houston:

Q. Mr. Bennett, I show you a document marked for identification Respondents' Exhibit 128-A to C, and ask you if you can state what that is.

A. I recognize this as—this 128-A, B, and C as
2659 card 1, published August 1, 1913, by the National Metal Molding Company as rigid conduit agents for the National Tube Company, giving the prices on conduit, the varying discounts.

Q. Now, Mr. Bennett, you were asked yesterday a question whether you can state during what period your arrangement with the National Tube Company relating to their manufacture of pipe was, your fabrication of the pipe into conduit and its consignment to a jobber for sales —you were asked during what period that arrangement was in effect.

Looking at that document, does that refresh your recollection on that matter?

A. It does very definitely, because when the National Tube Company took over our conduit business it very definitely set up two or three new procedures, and this reflects those procedures.

Q. Mr. Bennett I show you the price cards of National Electric Products Corporation from card 69 through card 84, which are in evidence as Commission's Exhibit 62, and ask you who in your organization had the responsibility for issuing these cards?

A. The president of the company, three vice-presidents, and two or three clerks.

Q. Now, Mr. Bennett, will you state how these cards are issued by you, what circumstances you consider in issuing them, and what mechanical procedure you go
2660 through in the consultation among these people that you have mentioned in issuing the cards?

A. Well, a card may have been issued because somebody else issued one. On the other hand, a card may have been issued because we thought it was about time to change our price up or down. The focus of the price list is in my office. I don't think I ever changed a card without discussing it with the president of the company. Then we

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called on Mr. Kim for costs to find out what we were paying for pipe per ton, zinc per ton, labor costs. I don't believe there was ever a card issued that Mr. Robinson didn't take his pencil and figure up how much he was going to make or lose per ton.

Q. Who is Mr. Robinson?

A. The president of the company. I usually gave instructions to issue a card.

2663 Q. Mr. Bennett, will you state whether or not there are cards among this group on which when you issued them you expected that you would lose money?

Mr. MacIntyre: I object.

Trial Examiner Norwood: I think he may answer 2664 that without putting costs into issue here.

Mr. Houston: That is the point.

Trial Examiner Norwood: Objection overruled.

A. Yes.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

Mr. Houston: Mark this, please.

(A document was thereupon marked for identification "Respondents' Exhibit No. 129.")

By Mr. Houston:

Q. Mr. Bennett, I show you a paper marked for identification Respondents' Exhibit 129, and ask you what that is (handing document to the witness).

A. This is a letter dated June 27, 1938, addressed to C. J. Kim in our office, signed by myself.

Q. Does it relate in any way to the preparation of your cards?

A. It does. I tell him, "Unquestionably there will be a change in the price of rigid conduit, and it will be necessary for us to issue a new card."

Q. It won't be necessary to read it, Mr. Bennett.

Do you know whether this was one of the documents which was taken from your files by an Examiner of the Federal Trade Commission?

2665 A. It is.

Mr. Houston: I offer in evidence Respondents' Exhibits 128-A to C and 129 (handing documents to Mr. MacIntyre).

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2668 RESPONDENTS' EXHIBITS NOS. 128-A to
2669 128-C, and 129, were offered and received in evidence.

Trial Examiner Norwood: Five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed with the examination.

By Mr. Houston:

Q. Mr. Bennett, in issuing a card of your company what consideration do you give to the fact that a competitor of yours has issued a card higher or lower than the card that has been in existence?

A. Every consideration under the sun. We want to know whether he is higher or lower, but, not only that, we want to know what his discounts are off the card. Now, he may issue a card, but that doesn't mean that that is his price. I may issue one that reflects not only his card but his special discounts too.

Q. You are testifying from your experience in business?

A. Yes, experience.

Q. Mr. Bennett, in issuing your cards what agreement or understanding, if any, have you with your competitors about issuing these cards?

Mr. MacIntyre: I object to the question. It calls for a conclusion. It does not call for the facts upon which that question can be decided by the Commission and the
2670 courts.

Trial Examiner Norwood: Overruled.

A. We issue our own cards. Always have.

Trial Examiner Norwood: He asked you—

The Witness: We don't consult with our competitors on our cards.

Trial Examiner Norwood: Do you have agreements with them respecting the cards?

The Witness: We have not.

By Mr. Houston:

Q. You are free to issue cards at any time as you see fit?

A. Positively. Always have.

Q. Mr. Bennett, have you ever had any agreement or understanding with any of your competitors that when you issue a card you would adhere to that card?

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Mr. MacIntyre: Same objection as to the previous question.

Trial Examiner Norwood: Overruled.

A. No.

By Mr. Houston:

Q. Mr. Bennett, in publishing a card which you issue as a result of a competitor's having issued a higher or lower card, why is it, if it is a fact, that you use the same number of card as your competitors in issuing that card which contains the same prices as your competitor's card?

2671 A. To avoid confusion.

Q. Confusion in what respect?

A. Well, we have something like ten or twelve thousand contractors, four or five thousand engineers, architects, 15,000 industrial plants, two or three thousand jobbers, and all the other people. If we don't number our cards we would probably identify them by dates.

Mr. MacIntyre: May I have the last part of the answer?

(Last part of answer read.)

By Mr. Houston:

Q. Will you state how prices on conduit are quoted and understood by the contractors who deal in these prices?

Mr. MacIntyre: I object to him stating the understanding of contractors.

Trial Examiner Norwood: Objection sustained.

He can tell us what he understands.

By Mr. Houston:

Q. Mr. Bennett, has National published all the cards in consecutive number from card 69 to card 84? Can you state that from your recollection?

A. My recollection is we have missed one or two.

Q. Do you know recall whether you published a card 79?

A. I don't recall exactly. We may have.

Q. I believe you will find that card 79 is missing

2672 from the list of Commission's Exhibit 62. Would you be able to state whether or not that was because you did not issue a card or because the Commission was not furnished with that card?

A. I think we furnished the Commission all we have, all we ever published.

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Q. Between those numbers.

Now, Mr. Bennett, when you issue a card of a given number, do you totally discard your old cards? In other words, have they any further use in your quotation of prices on conduit?

A. We refer to them, because of old contracts that we have on file that carry over six months, sometimes a year, sometimes two years.

Q. Do you ever make any new sales—by that I mean do you ever take any new orders on cards of a number earlier than your last issued card?

A. Oh, yes. Yes.

Q. Mr. Bennett, from the time you issue a card until the time you issue a new card do you uniformly take new orders for your conduit on the basis of your last issued card?

A. No, not uniformly. There isn't anything uniform in this pricing story.

Q. I mean by that, do you, when asked, quote only the prices which are shown in your last published card until a new card is issued and published by you?

2673 A. I don't know whether I understand your question or not, but if we had card "X" in effect today I might seek to quote 2½ or 5 or 7½ off, according to the competition.

(A document was thereupon marked for identification "Respondents' Exhibit No. 130.")

By Mr. Houston:

Q. Mr. Bennett, in answer to a prior question you stated that you used the same number of your card, the same number on your card as shown on a competitor's card when your card contained the same prices for the materials as shown on your competitor's card.

I show you in that connection a paper, marked for identification Respondents' Exhibit No. 130, and ask you what that is (handing document to the witness).

A. This is a letter dated December 15, 1938, to our consigned stock jobbers on rigid conduit.

Q. Now, does that relate to the issuance of any card by you?

A. It relates to issuing card 80.

Q. And to whom—was that mailed to the people addressed in that?

A. Yes, to all of our distributor agents.

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Q. And in this a letter which was taken from your files by an Examiner of the Federal Trade Commission?

A. Yes. It is marked.

Mr. Houston: I offer this Respondents' Exhibit
2674 130 in evidence (handing document to Mr. MacIntyre).

Mr. MacIntyre: It is objected to as immaterial.

Trial Examiner Norwood: Let me see it just a minute.

(Mr. MacIntyre hands the document to the Trial Examiner.)

Mr. MacIntyre: Accumulative.

Trial Examiner Norwood: Now, this is a letter that was sent out on December 15, 1938, to your trade?

The Witness: Yes.

Trial Examiner Norwood: Or to our employees?

The Witness: No; to our distributor agents.

Trial Examiner Norwood: Yes.

Objection overruled.

Received as marked.

RESPONDENTS' EXHIBIT NO. 130 was offered and received in evidence.

By Mr. Houston:

Q. Now, Mr. Bennett, you have testified that between the—after the time you have issued a card you do not necessarily continue to sell at that card until you publish a new printed price list. Is that correct?

Mr. MacIntyre: I object. It is not the witness' testi-
mony. The witness' testimony is to the effect that he
2675 made some sales not in accordance with the card. The question is to the different effect.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Well, I think the question is objectionable from many standpoints. One is it is leading. I do not think you should remind this witness what he has testified to heretofore unless it is necessary for some explanation.

I shall sustain the objection.

By Mr. Houston:

Q. Mr. Bennett, between the dates you issue cards do you continue to sell conduit and quote prices only on the basis of your last printed card?

Mr. MacIntyre: I object. The witness has answered a question as to what he does in that respect, and the coming back to it in this manner immediately after you have sus-

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tained an objection to a question goes to this question, because it was leading, and it most certainly does not cure the leading character of the other question.

Trial Examiner Norwood: I think in all the circumstances it will be harmless. It is a leading question, of course. I will let him answer this one.

The Witness: The question, please?

Trial Examiner Norwood: Read the question.

2676 (Question read.)

A. No.

By Mr. Houston:

Q. Mr. Bennett, in that period how do you convey to your trade, your distributor agents and others, any different prices than those shown on your last printed card?

A. Usually by letter or telegram.

(Documents were thereupon marked for identification "Respondents' Exhibits 131, 132, 133, 134, 135-A and 135-B, and 136-A and 136-B.")

By Mr. Houston:

Q. Mr. Bennett, I show you some documents numbered Respondents' Exhibits 131 to 136, for identification, and ask you what these documents are.

A. No. 131 is a telegram sent out by me on July 6th—

Trial Examiner Norwood: Can't you describe them all generally as correspondence from your office; isn't it?

The Witness: I don't know what they are, Your Honor. I haven't seen them.

Trial Examiner Norwood: Well, look at them. See if you can identify them as a whole.

A. These documents seem to date from 1938 to 1945, inclusive. They all have to do with my changing the price on conduit.

Trial Examiner Norwood: They are all letters that were taken from your files—

2677 The Witness: Letters taken from my files by the Federal Trade examiner, and are addressed to our distributor agents, meaning consigned stock customers, and to our salesmen.

Trial Examiner Norwood: Letters and a telegram, the first one?

The Witness: One telegram and several letters.

Trial Examiner Norwood: Go ahead.

(A document was thereupon marked for identification "Respondents' Exhibit No. 137-A and 137-B.")

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By Mr. Houston:

Q. Mr. Bennett, I show you a document marked for identification Respondents' Exhibit 137-A and B and ask you if that is a similar letter to the ones which you have already described.

A. Yes. This is a similar letter.

Q. To the best of your knowledge, Mr. Bennett, will you state whether the facts which are stated in this letter are—within these letters are correct, to the best of your recollection?

A. They are. I don't very often put my signature on something that is incorrect.

Q. Mr. Bennett, do these letters state the reasons which influenced you in taking the action which is indicated in them at the time they were written?

A. They do. They give the reason why I write the letter.

2678 Q. Do you know whether—

Mr. Stewart: I didn't catch that.

The Witness: They give the reason why I write the letter or telegram.

Mr. Stewart: Thank you.

By Mr. Houston:

Q. Do you know whether these documents were taken from your files by an examiner of the Federal Trade Commission?

A. Yes.

Q. You would say that they were?

A. All of them were.

Q. And these letters were mailed to the persons addressed in the letters?

A. Yes.

Mr. Houston: I offer in evidence Respondents' Exhibits 131, 132, 133, 134, 135-A and B, 136-A and B, and 137-A and B.

Mr. MacIntyre: I would like to have time to look these over between now and the time we convene after lunch to see if there are any objections to them.

Trial Examiner Norwood: If there is no objection, he may retain them. Proceed with the objections after lunch hour. We will recess until 1:45.

(Whereupon, at 12:10 o'clock p. m., a recess was taken until 1:45 o'clock p. m. of the same day.)

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2679 Afternoon Session.

1:45 P. M.

Trial Examiner Norwood: Proceed.

Are you ready to go ahead?

Mr. Houston: Yes, sir.

Would you mind reading the last question and answer please?

(Previous record read.)

Trial Examiner Norwood: Are there any objections to the proffer?

Mr. MacIntyre: I would like to make my objection a little later, if I may.

Trial Examiner Norwood: All right.

Mr. Houston: That is agreeable.

Mr. MacIntyre: If it is agreeable.

Mr. Houston: Sure.

Trial Examiner Norwood: That refers to Respondents'—

Mr. MacIntyre: 131 to 136.

Trial Examiner Norwood: —131 to 136-B, inclusive.

Go ahead.

Mr. Houston: 137, I believe, sir.

Trial Examiner Norwood: 137-B, inclusive. Yes.

Proceed.

I. A. BENNETT thereupon resumed the stand and testified further as follows:

2680 *Direct Examination (Continued) by Mr. Houston.*

Q. Mr. Bennett, do the price cards published by National represent firm quotations of prices on conduit by your company?

A. No. We make it a point that they do not.

Q. Did they ever represent firm quotations—

A. No.

Q. —on conduit?

A. No. You see, under our National Tube operations we always gave a point or two off. I think this letter explains that.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

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Q. Mr. Bennett, in some of your letters which are in evidence here introduced by the Commission, you refer in those letters to a one-price policy of your company. Will you state what you mean by that language?

A. The National Company from its inception, 1905, adopted a very definite price policy. We published our price list and we mailed those price lists in those days to our competitors to avoid misunderstandings, with the idea of having it known as to what our prices were. We maintained that system until about 1934, I think it was, or in there, when competition had taken advantage of that
2681 situation to such an extent that we had to change our policy.

Q. Now, will you state what change in policy you made after 1934?

A. Well, meeting conditions as we found them and quoting discounts as may be necessary to obtain an order.

Q. Will you state again the reasons why you made that change?

A. Because competition took advantage of a published price list and sold below us and we lost the business.

(Documents were thereupon marked for identification "Respondents' Exhibits 138 and 139-A and 139-B.")

By Mr. Houston:

Q. Mr. Bennett, I show you two documents marked for identification, Respondents' Exhibit 138 and Respondents' Exhibit 139-A and B, and ask you what those are.

A. 138 is what we called our card 60, the price list in effect April 1, 1930.

Exhibit 139-A and B are our card 61 in effect dated June 16, 1930.

Q. Now, Mr. Bennett, I would like to ask you whether the method of obtaining a quotation on conduit is the same in card 60 as card 61.

A. No. Our card—in the introduction of card 61 we made some very outstanding changes. For instance, in card 60 in effect April, the discount on half-inch conduit from 8½ cents a foot list was 33 percent, while in card
2682 61 we published a net price on half-inch conduit and abolished the list and discount method and gave a discount to our jobbers varying from 3½ to 12 percent, based on the service that they did for us in distribution.

Q. Mr. Bennett, I show you a document marked—which is in evidence here as Commission's Exhibit 80-R, entitled

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"Freight adders and terms," bearing a date June 10, 1930, and ask you what that is.

A. Well, as the name implies, "freight adders and terms" and to obtain a delivered price in any particular city and any particular State it gave a key number which, by referring to these tabulated forms further in the book, that key number would give an adder to add that would take care of the transportation charges from our mill to that particular point.

Q. Now, who prepared that Exhibit 80-R?

A. We did.

Q. You mean by "you"—

A. National Company.

Q. National Company.

Now, Mr. Bennett, was that Exhibit 80-R used in connection with your card 61 which I have shown you?

A. Yes.

Q. Respondents' Exhibit 139-A and B, for identification?

A. Yes; that is right.

Q. Now, Mr. Bennett, will you state the reasons
2683 why the change was made in your method of quoting prices between card 60 and card 61?

A. Well, it was—had reached a stage where it was practically impossible for anybody to figure out a price—net price in any given city on conduit, even among our own trained salesmen, and I felt that I—by adopting card 61 we simplified the story and brought it down to an understandable—quickly understandable price list.

Q. Can you state how long the method shown in card 60, Respondents' Exhibit, for identification, had been in use by your company prior to 1930?

A. Prior to 1930?

Q. In other words, is that the same method which is shown, for example, in Respondents' Exhibit 119-D?

A. No. No. Respondents'—this Exhibit 119-D very distinctly covers the card and used both the discount and also points off. For instance, in quoting here we say "On any orders that you send us we will allow you a still further discount of one point on carloads and two points on less-than-carloads.

"Where Economy conduit is quoted at 68 percent off carloads we will allow you one point additional, or 69 percent."

Q. Now, Mr. Bennett, referring to the page 119-D, will

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you compare that with the card 60 marked for identi-
2684 fication Respondents' Exhibit 138, and state if there is any difference in the method of quoting prices on conduit between the method shown in 119-D and in the Respondents' Exhibit 138?

2685 Trial Examiner Norwood: I think to show that you will have to offer the sheet.

Mr. Houston: Very good, sir.

I offer in evidence Respondents' Exhibits 138 and 139-A and B.

Mr. MacIntyre: These exhibits are not material. Of course, we could go on here for weeks in and weeks out by offering all of the price cards that all of these people have ever issued. What they do to get at the conclusion of the case of proper decision in the case I submit they would not help, and these don't.

Mr. Houston: If Your Honor please—

Trial Examiner Norwood: Well, I think the counsel can offer them to judge for the time being as to whether or not they are going to count.

Mr. MacIntyre: I don't know what led him to make the decision to offer them, but I submit this: That there is no more reason to offer those than there would be to offer everything that these Respondents ever issued in the way of price cards, and, of course, that is ridiculous.

2686 Trial Examiner Norwood: It would be cumulative.

Mr. MacIntyre: Of course, we have already passed on this.

Mr. Houston: May I be heard on this before you make up your mind, sir?

Trial Examiner Norwood: Certainly.

Mr. Houston: Before you make your decision—

Trial Examiner Norwood: What is it?

Mr. Houston: Mr. MacIntyre has attacked here a particular system of pricing which is in use by these Respondents. Now, I am showing here the origin of that system of pricing. I am showing that it was the idea of Mr. Bennett which was first put out in his card 61 dated June 10, 1930. The record will show as to that that it was a matter of some six or eight months that the other members of this industry decided Mr. Bennett had something and went ahead and followed him.

Trial Examiner Norwood: I think you have a right to put these in.

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Mr. MacIntyre: You are offering these, now, as I understand, Mr. Houston, to establish proof of the origin of the basing-point system and the use of it in the rigid steel industry?

Mr. Houston: No. Wrong again, Mr. MacIntyre. I am not—

2687 Trial Examiner Norwood: Now, the objection is overruled and the exhibits are received as marked, 138 and 139-A and B.

RESPONDENTS' EXHIBITS NOS. 138 and 139-A and 139-B were offered and received in evidence.

(There was a discussion off the record.)

(Last question read.)

Mr. Houston: May the witness answer that question, sir?

Trial Examiner Norwood: Please read it.

(Question again read.)

Trial Examiner Norwood: I think the exhibit will show for itself.

By Mr. Houston:

Q. Mr. Bennett,—

Trial Examiner Norwood: Was there an objection to that?

Mr. MacIntyre: I am objecting to the documents and all questions that go to them in this line, including this.

Trial Examiner Norwood: I sustain the objection to that question. I understood there was an objection.

Go ahead. He may describe his practice during the times that these different cards were in effect.

By Mr. Houston:

2688 Q. Now, Mr. Bennett, in making the change from the method shown in card 60 to the method shown in card 61, did you discuss that problem with any of your competitors before you made that change?

A. No.

Q. Do you know whether your competitors adopted a similar method of pricing at any time after you introduced this method shown in card 61?

A. My recollection is that they did a long while afterwards. I think it was pretty nearly a year, or something like that; a while ago.

Q. Mr. Bennett, did your company ever purchase any

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freight adder book from the Youngstown Sheet & Tube Company?

A. No. Published our own.

Q. And will you state why you made this change from the old method to the new method, please?

A. To simplify and make it easier to find the price of conduit any place in the United States.

Q. And did you find that the new method achieved the result which you had in mind?

A. It did.

Q. Mr. Bennett, has your company prepared a detailed study of the sales made on or off your current card for the period 1934 to the date of this complaint, which, I believe, is January 25, 1941?

2689 A. No. No, they haven't.

Q. Mr. Bennett, were you ever requested by your counsel to make such study?

A. Yes. Yes. Yes.

Q. And why did you not do it?

A. Simply lack of ability to put in the time. In places we are working four to one now. We couldn't find the time to do it.

Q. Mr. Bennett, are you familiar with the sales made by your company during the period which I have mentioned, 1934 to the date of this complaint, January 25, 1941, as to the sales made on your current card or off your current card?

A. Oh, yes, naturally.

Q. Will you state as accurately as you can in terms of percentages the percentage of sales which have been made on the then current card, and the percentage of sales which have been made off the then current card during this period?

2692 By Mr. Houston:

Q. Do you understand the question, sir?

A. Yes, I understand the question. I think that since 1934 our average would be somewhere around 60 percent on the card, 40 percent off the card; or in some months that would be just exactly reversed according to the conditions of competition.

Q. But you are speaking over the whole period—

A. Yes.

Q. —in giving your estimate you have given me?

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A. Yes. I am talking about in 1934 when we changed our policy, up to, oh, within the last few months.

Q. Mr. Bennett, when I asked you the question whether you had made a detailed study, did you understand by that that I meant a personal study, or did you understand that I meant a tabulation of the records in your files?

A. What I understood you to ask me to do was to make a tabulation of our sales, our records of selling on the card and off the card, and we couldn't do it. Just didn't have time.

Q. Mr. Bennett, have your records been accessible to examiners of the Federal Trade Commission since this case has been started?

A. It has.

Q. And have those records been examined by the Federal Trade Commission?

2693 A. Three different men, I think.

Q. By three different men.

Mr. Bennett, did you have any part in the negotiations which led up to the hiring of the Organization Service Corporation and Mr. Blake as advisers to the Rigid Steel Conduit Association in 1936?

A. I think I instigated it.

Q. You instigated what, Mr. Bennett?

A. The setting up of the procedure to employ Mr. Blake.

Q. Will you state your reasons for making that effort, sir?

A. Why, yes. This Association had over a period of time done some very valuable technical work. At another time we had both technical men and a secretary, Mr. Sicard. We tried to operate with A. Penn Denton as technical director. His time was too much taken up with the technical work and he couldn't give any time at all to some of these other things that were necessary that were bothering the industry, such as these fraudulent contracts, and I remember very distinctly of notifying the Association that we didn't care to put in any more time except on technical meetings unless we would employ someone who would give us counsel as to the new laws. We had the Illinois law and the California law, the New York law; we had the Robinson-Patman Act come in on us. We were selling conduit at different prices, to different customers

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in the same town and different towns. We didn't
2694 know where we were at, and I asked the Association to give consideration to employing counsel as a secretary rather than merely a commercial secretary. I think as a result of that talk a committee was appointed to try and find someone. I know that I had three or four applications, three or four different concerns wanting to tackle the job, but I am pretty busy. I have a great many other things to do besides sell conduit, attend meetings. I think I was made a member of the committee. Someone—

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

A. —brought me Mr. Blake's name. Eventually Mr. Blake appeared before the Association and discussed his qualifications for being able to handle our particular problems which were at that time the Robinson-Patman Act. That is the thing that concerned me the most. We had customers, jobbers writing in regarding the Illinois law and the California law and the New York law none of which I am capable of carrying out except through counsel. And it seemed to me that it was naturally a mutual interest of the Rigid Conduit Industry. I think that the same thing was discussed in other industries like wire and armored cable and NEMA, and so forth. Conduit being separate and distinct from NEMA, it had to have a set-up of its own legal counsel.

By Mr. Houston:

2695 Q. Did you know Mr. Blake before the time that his company was retained here?

A. No.

Q. Did you confer with Mr. Blake at any time prior to the contracts being executed?

A. Yes. I think I was a member of the committee who called on Mr. Blake.

Q. Mr. Bennett, I show you Commission's Exhibit 533-A and B, and ask you if you will examine those documents.

A. (After a pause.) I have read them.

Q. Mr. Bennett, I would like to ask you if you have ever seen that exhibit before? Have you ever seen the memorandum which that—

A. No. This is the first time I ever saw these.

Q. Do you know who wrote that?

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A. I haven't the slightest idea. I didn't know they existed.

Q. Did you ever hear that discussed at any meeting preliminary to the hiring of Mr. Blake?

A. I think that is—

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

A. I think some of these paragraphs here might have been written as a result of the talk that I gave to the Association requiring—or suggesting that we have a counsellor. For instance, "operate under the Robinson-Patman Act."

2696 Q. Well, were any of those other—will you look at 533-A, and I ask you whether they summarize your talk to the extent that they state "to recommend a proper definition of a jobber," and so forth, on the first page. Was that in your talks to the Association?

A. No. We wouldn't hire a counsellor for that. He wouldn't know—

Q. Well, was that memorandum, to your knowledge, ever discussed at any of these meetings which you stated you had with Mr. Blake before he was hired?

A. I never saw it before. I never heard of it before.

Q. Mr. Bennett, I believe it is a fact, as shown by the record, that National Metal Molding Company, the predecessor of National Electric Products Corporation and National Electric Products Corporation have been members of various associations of conduit manufacturers; is that correct?

A. Yes.

Q. Now, will you state the reasons why National was a member of those associations? National and its predecessor, I mean by that term "National."

A. Well, I think the first electrical association, American Associated Manufacturers of Electrical Supplies, I think that was formed in National offices by a joint meeting of a—various members of the industry who had been meeting over the question of technical questions without, you might say, due organization up to that time. It

2697 was found, I believe, necessary to organize and it was organized principally as a result of a fight that had been in the industry between the subject of grounding or not grounding in electrical circuits.

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Q. And what had been National's position in that controversy?

A. National Company was formed in 1905 to make grounded materials, and has continuously operated on that basis.

Q. That is, in grounding in what you have spoken of in your prior testimony?

A. Material for the grounded wiring system.

Q. I believe Major Quinn testified that the particular article was so-called concentric wiring; was that correct?

A. Right, yes.

Q. Now, will you go ahead and state any further reasons that National had for belonging to these various Associations?

A. Well, we—the American—the Associated Manufacturers were afterwards consolidated into NEMA. We belong to NEMA today, National Electrical Manufacturers Association. Because of the technical advantages we gain we have got to belong to it.

For instance, I might illustrate the case. Our resignation has been in for a year. I objected to paying their high price dues, and yet I can't resign very readily owing to the technical set up of NEMA which is important
2698 to us.

Q. Now, are you speaking about your today's membership in NEMA?

A. Yes.

Q. Now, is that a membership which you maintain because of your conduit manufacturing?

A. No.

Q. Does that relate to other materials which you manufacture?

A. That relates to other material. The reason for the rigid conduit branch of NEMA getting out from under NEMA was due to the fact that rigid conduit is definitely grounded metallic circuit system and could not be used for anything else or sold under any other program, while NEMA has all classes of manufacturers as memberships, and the competition of the conduit restricted the rigid conduit people from going out and selling their product.

Q. Was there any other work of the Association in which your company was interested?

A. Well, the gathering of industry statistics is almost the life of any industry.

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Q. Well, now, what were these statistics to which you refer?

A. Well, the total volume of business produced month by month.

2699 Q. How was that kept? In terms of what? In terms of dollars or in terms of tons—

A. Tons.

Q. —or feet?

A. Tons.

Q. Tons?

A. Tons. We not only are interested in that, but we are interested in our engineering problem. At one time we spent six months and perhaps a quarter of a million dollars trying to find out how best to put that thread on there.

Q. Would you state what exhibits you are referring to, Mr. Bennett?

A. That is Exhibit 25. In that work was a determination of a change in the steel of which that was made.

For instance, we have changes in building operations, changes in materials. At one time we all of a sudden found out that we were using narrow or thin partitions.

Q. Thin what?

A. Thin partitions. This conduit coming down the thin partition couldn't make the turn; couldn't make a bend sharp enough without breaking or splitting the seam. That study took the industry well into, oh, I should say a year. At another time the industry made a study that involved every pipe manufacturer and every pipe expert in the country, how to make that a thinner steel and yet re-

2700 tain its bending ability and threading ability.

You understand in conduit the underwriters' requirements are that a certain sweep of material shall be made in an elbow.

Trial Examiner Norwood: Certain curve?

The Witness: Curve. If it was like water pipe or gas pipe you couldn't pull the wires around the curve. These new thin partitions like moving picture theaters, when they first came into the picture, the complaints manufacturers received are very important.

Trial Examiner Norwood: Is that piece there you have made of commercial pipe?

The Witness: That is commercial pipe; yes, sir.

Trial Examiner Norwood: Is commercial pipe steel?

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The Witness: Steel; yes, sir.

Mr. MacIntyre: If Your Honor please, this discussion that Mr. Bennett has just gone through I admit is quite interesting, but I don't believe that—

Trial Examiner Norwood: I think he has illustrated it sufficiently.

Mr. MacIntyre: —it is necessary to go into so much detail—

Mr. Houston: No. I agree.

Mr. MacIntyre: —for the purposes of this case.

By Mr. Houston:

2701 Q. And those are some of the activities of this Association in which National was interested?

A. That is right.

Q. Would they be typical of the technical problems with which you were met?

A. Yes.

Q. Mr. Bennett, could you state what percentage of the time and energies of these organizations while they were in existence were devoted to these technical matters such as you have described and those which were devoted to other matters which they discussed?

Mr. MacIntyre: I object. It is irrelevant and immaterial whether the associations to which this man belonged, his company belonged, spent only 5 percent of their time in the Association doing unlawful acts and 95 percent doing something which could only be questioned.

Trial Examiner Norwood: Read the question.

Mr. Bozeman: If Your Honor please, I move to strike that remark from the record.

Trial Examiner Norwood: Motion denied.

Go ahead.

Mr. Bozeman: It is a thoroughly improper remark in this case for him to prejudge it in any such fashion as that.

Trial Examiner Norwood: Motion denied. I will
2702 overrule you, Counsel. If I strike every little party's speech on both sides I think the lawyers would agree. Those speeches are not evidence and they are not considered as such.

Go ahead.

Mr. MacIntyre: I stated that as an objection to this last question.

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Trial Examiner Norwood: Yes.

(Question read.)

Trial Examiner Norwood: Well, now, can you give us any firsthand knowledge of that arising from your work with these companies, or—with these Associations? Were you an officer in them? I have forgotten just what your testimony was.

Mr. Houston: Oh, yes, he was.

The Witness: Yes. Quite frequently I was chairman of the Association, and I was very familiar with the work.

Trial Examiner Norwood: I will overrule the objection.

The Witness: It would be difficult for me to give the answer in percentages. I think it would be more clarifying if I said that in addition to employing Penn Denton and an office for technical matters, we also had a Technical Industry Committee composed of four or five men who were constantly at work on this subject of technical matters.

2703 The percentage of business—of time devoted to statistical work was small. The percentage of time devoted to technical matters was very large.

By Mr. Houston:

Q. Now, Mr. Bennett, do you recall the fact that Mr. Hodkinson during the N. R. A. period was appointed as supervisory agency of the roughing-in division of NEMA?

A. I do.

Q. Did Mr| Hodkinson have any official position in the National organization at the time of his appointment?

A. He was vice-president and general manager of the American Circular Loom Company, which we owned a hundred percent of their stock.

Q. Were Mr. Hodkinson's activities as vice-president of American Circular Loom Company at all under your supervision as an officer of National?

A. Directly.

Q. Did you have any voice in the selection of Mr. Hodkinson as the supervisory agency?

A. It came to me as an unfortunate surprise.

Q. You mean his appointment as supervisory agency?

A. Yes.

Q. Did you know about it before he was appointed?

A. I did not.

Q. What did you mean by "unfortunate surprise"?

2704 A. Mr. Hodkinson was also a member of the board of governors of NEMA, and he was under severe

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criticism for taking up company time, and his volume of business had been under criticism, and then for him to take the job as supervisory agency for NEMA was very unfortunate for him.

Mr. MacIntyre: Off the record.

(Discussion off the record.)

Q. Mr. Bennett, I show you Commission's Exhibit 664-A, which, I believe, has been identified as a consigned stock contract of National which was put into effect in the early part of 1937, and I also call your attention to Exhibits 682—Commission's Exhibits 682 and 683, which are two forms of purchase contracts for conduit of your company.

Mr. Bennett, do you recall when those forms were sent out to your consigned stock distributors?

A. Well, some were around the early part of 1937, I guess it was, Feburary or—I think I started to work on this in 1936. This particular contract is marked "Revised April, '37."

Mr. MacIntyre: Which one are you referring to now?

Mr. Houston: Is that exhibit—

The Witness: That is Exhibit 664-A.

(Discussion off the record.)

(A document was thereupon marked for identifica-
2705 tion "Respondents' Exhibit 140-A to 140-E.")

By Mr. Houston:

Q. Mr. Bennett, I show you a document marked for identification Respondents' Exhibit 140-A to E, and ask you if that is the letter of transmittal with which you sent the forms 664 and 682 and 83, among others, to your consigned stock distributors, or customers, as you refer to them?

A. I don't think there is any question about it. I think this is the letter I sent out to all of our distributor agents with the complete set of forms; that is, the new consigned stock contract and the new building contract forms.

Q. And these were among the forms which were enclosed with that letter, which was sent with that letter?

A. I would say the original of 664-A and the Exhibit 682; yes, sir.

Q. Mr. Bennett, you have stated that 664-A is marked April of 1937. Would you state whether or not that is not in substance a reprint—

A. It is.

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Q. —of the same form which was sent out with this letter?

A. Undoubtedly is. There may have been some little word or phrase that might have been changed, but—

Q. But that is substantially—there is no substantial change? Am I correct about it?

A. The meaning of it is the same.

2706 Mr. Houston: I believe there is a pending offer, Your Honor.

Mr. MacIntyre: As to this pending offer of Respondents' Exhibit 140-A to E, it contains an awful lot of detail by the witness analyzing these documents that are in evidence, and the analyses most certainly are not necessary to understand the documents. They are, therefore, immaterial, and whatever that is needed in the way of an explanation to them it would be more proper coming from the witness since he is on the stand.

Mr. Houston: If Your Honor please, if this is nothing more, it is part of the res gestae of the case. I mean, after all this was a letter which transmitted the new contract forms, and I think it discusses in considerable detail some of the reasons why this was done, and it does, I admit, give an analysis of them, but I don't think that that is harmful. If anything, it is helpful. If there is any cross-examination on that I think that can be taken care of at the proper time.

Mr. Stewart: May I suggest also, since the wit-

2707 ness as well as his company is charged with a conspiracy to do something unlawful, that what he shows by that document he intended to do at the time he did it. It is very material, his reasons for it, as bearing upon whether he was conspiring with somebody or agreeing with somebody or acting upon his own initiative.

Trial Examiner Norwood: I think he may give his reasons, and he may give this sort of thing. He is on the stand here.

Now, I don't know whether the offer—I shall have to give it some study before ruling on it.

Mr. Houston: This went to the distributors, I take it.

Trial Examiner Norwood: Yes. This went to the distributors at the time he sent them a copy of his consigned agency agreements.

Mr. Stewart: That is right. That is right.

Mr. Houston: That transmits, I believe, Your Honor, all the—

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Trial Examiner Norwood: It is not admissible just because it was a letter of transmittal of something.

Mr. Stewart: No. No. Not at all. The point of it is it shows his reasons why he did it at the time he did it. He is always open to the argument that he is mistaken or in error or something of that sort.

2708 Trial Examiner Norwood: Proceed.

What about the others, 131 to 137-B?

Mr. MacIntyre: The same objection, of course, applies to 131 to 137, inclusive. If a policy is followed such as now being urged by Mr. Houston in receiving evidence here, these Respondents could go ahead, go through their files, take out the part of the story that is favorable to them, self-serving, bring it down here and offer it in evidence.

Mr. Stewart: That is exactly what Mr. MacIntyre has done, take out the part that is unfavorable, and we are putting in the whole picture.

Trial Examiner Norwood: Where it shows the connection, they have a right to show it.

Mr. MacIntyre: But these documents that are now being offered are not necessary to explain anything that we put in or any particular document that we put in, and, of course, this doctrine of admissions is something when applied that does not give license to the other side to bring in everything that they have ever written because it might bear upon the same subject. It is their hard luck that they have written admissions of their guilt which can under the doctrine of admissions and which have under the doctrine of admissions been admitted in evidence against them without their right of cross-examination, but most cer-

2709 tainly it doesn't apply both ways, because the admission has got to be offered by the adverse party and it must then be consistent with the position taken by the party against whom it is offered. These documents do not fall,—that are now being offered,—within such fields. They are self-serving.

Mr. Gilpatric: I suggest, Mr. Examiner, that they do come within the definition of materiality, to one of the tentative definitions which you have suggested at the outset of this case, the relations of this particular Respondent to other activities that are allegedly unlawful here. Of course, we can't just dump our whole files into court, but where a document such as the ones you have here goes to show that the person who received these documents which the Commission has put in evidence intended it to mean

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the purpose for which they were formulated and published, I think we can go that far in putting in contemporary writings.

Mr. Taylor: In addition to Mr. Gilpatric's statements, in view of the fact that Mr. MacIntyre has referred to these documents that they put in by the Commission as admissions of guilt, and fully mindful of the fact that that is not adequate, I still feel constrained to say at this point that a fair reading of the record will do at most create an inference of guilt. That might create an inference, but they are not admissions of guilt. I think that is an improper statement.

Trial Examiner Norwood: I shall reserve the rul-
2710 ing on this until tomorrow morning, if I may, because if it is the same part of transactions which were put in, even though they were admissions and even though these are not admissions, if they explain them or modify them in any way they have a right to go in.

Now, I will see just what it is.

Mr. MacIntyre: I will admit that these go to part of the business of these Respondents. They relate to the business of the Respondents. But they are inadmissible here as evidence in the manner offered.

Trial Examiner Norwood: They relate to the same matters here, this matter of price.

Mr. Stewart: All you have to do is to read Mr. MacIntyre's exhibits, and you will find that what runs all through them is what Mr. Bennett designated as his merchandising policy. Now, he takes some part of them from which he gets some comfort. Now, we are giving you the rest of the picture.

Trial Examiner Norwood: He transmitted those cards that the Commission has put in evidence.

Mr. Houston: That is right. Look at the letters he has put in. You don't have time to look at them. There is a whole series of them.

Trial Examiner Norwood: I shall study it over night and give you my ruling on it.

2711 Is there anything further you want to say about it? Proceed.

By Mr. Houston:

Q. Mr. Bennett, when you put out these forms which are in evidence here as Commission's Exhibits 664 and 682 and 683, what did you do about the forms, Respondents' Ex-

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hibits 127-A to D and Respondents' Exhibit 123-A to E? Did you continue to use those forms?

A. No. We adopted the new forms.

Q. Did the new forms replace those old forms in your business?

A. Yes.

Q. Now, Mr. Bennett, will you state the reasons which influenced you in adopting these new forms of contract which you transmitted with your letter of February 10, 1937?

A. The contracts, our consigned stock contracts, had been in effect over a long period of years, some of them practically forgotten. It would have been impossible for me to, by mail, ask my distributor agent to throw away his old contract and take this new one without saying something about it. In developing this contract, this new form of contract, we realized that it was practically the same type of contract to take the place of an old typewritten contract that had been forgotten and the terms had been disregarded to such an extent that it was necessary
2712 for us to rejuvenate them. In transmitting these to our jobbers we asked them to sign them and return to us the old contracts. When these contracts came in, the new ones, we signed them and returned them to them and then developed a new plan. The reason that I call it a new plan is because that, while eventually it was the same story, yet it must be remembered that part of that story had been forgotten. There is one new feature injected here that I have been dealing with for many years, 25, 30 years, and that was this eternal question of the difference between a contractor and a jobber. There have been books written on it by the Department of Commerce. A contractor is an individual—

Trial Examiner Norwood: You don't need to—you need not tell us that.

The Witness: All right. There is a difference in price.

Trial Examiner Norwood: The Commission knows we have had considerable trouble over the same thing.

The Witness: There is a difference in price, and when the contractor could get the jobber price through subterfuge it limited you to a fewer number of customers in a given district by reason of the advantage this man had. We made it a part of this contract, which was something new, that wherever a jobber—

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Trial Examiner Norwood: Now, doesn't this paper 2713 explain that?

The Witness: This letter?

Trial Examiner Norwood: Yes.

Mr. Houston: I believe it does.

The Witness: I think it does. I don't know. I haven't read it through and I haven't read it for a long while.

Trial Examiner Norwood: You might move on to another subject until I study that and rule on it in the morning.

The Witness: Oh, all right.

Trial Examiner Norwood: If the paper is ruled out, why, he can go into the details there.

By Mr. Houston:

Q. Mr. Bennett, when did you first start to work on these new form of—these new forms of contract which you sent out with your letter of February 10, 1937?

A. The first serious work I did in the matter was in October, 1936.

Q. What did you do?

A. I wrote to all of our salesmen telling them that I want them to change my form of selling conduit and asking them for their personal opinions as to the sales commissions and what they would suggest as a cure for some of the misunderstandings and confusion that we had.

Q. Mr. Bennett, I show you Commission's Exhibit 2714 578-A and B, and ask you whether that is the letter to which you have just referred in your testimony?

A. It is, yes.

Q. Now, you state, then, that you wrote that letter to your salesmen. What did you do after that?

A. We wrote this salesman—this letter to all of our salesmen telling them what we were thinking of doing and discussing some of the phases of the change and asking their opinion. As we got their opinions we continued the discussion by mail and also had sales meetings in our offices with our salesmen on the subject and eventually developed ideas as to just how we wanted this contract to read.

Q. Did you make any preliminary drafts of those final contracts?

A. Yes. My method of developing this form of contract was to take each paragraph and put it at the head of a blank sheet of paper in duplicate form, which was distributed to our various factors in our organization who have to do with

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contracts and—on rigid conduit and ask their—for them to make a study and make their notes on the bottom of the sheets relative to each paragraph. Out of the whole I figured I got sufficient information to proceed.

Q. Now, did you submit any of these preliminary forms or drafts to Mr. Blake for his consideration?

A. Yes. When Mr. Blake was employed we sub-
2715 mitted to him the—our old form of contract, and I went further by submitting to him all the information I had relative to the ideas promulgated by our organization.

Q. And how was the final draft of these forms prepared? That is, in the form in which it was sent out with your letter of February 10, 1937?

A. Well, we prepared this draft and submitted it to W. A. Wilson, who was our attorney, for checking.

Q. Where was he located, sir?

A. Pittsburgh.

Q. Has Mr. Wilson died since the date you—

A. Yes, Mr. Wilson died.

Q. And did you ask Mr. Wilson for his opinion concerning their—

A. I think we have a written opinion on the subject. I am quite sure we did. We usually asked for written opinions on subjects of that kind.

Q. Do you know whether or not Mr. Wilson approved the forms that you submitted to him?

Mr. MacIntyre: I object.

A. He approved them—

Mr. Houston: Just a minute.

Mr. MacIntyre: I object to attempting to elicit from this witness statements as to what the advice of his attorney was on this matter, since that isn't the at-
2716 torney who drafted the plan and who submitted it to him before its adoption.

Trial Examiner Norwood: He isn't trying to prove their opinion.

Mr. Houston: No.

Trial Examiner Norwood: He is just showing he submitted it to his attorney, just the fact.

Mr. MacIntyre: May we have the last question read?

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: I didn't object to the question about

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him submitting it, but now he is asking if the lawyer approved it.

Mr. Stewart: No. He is asking whether he knows he approved it.

Trial Examiner Norwood: He may tell us whether his lawyer approved it or not.

Objection overruled.

A. Yes, he approved it.

By Mr. Houston:

Q. Mr. Bennett, referring to your consigned stocks which you carry with your jobbers and to this method of doing business, will you state whether or not those contracts with your jobber or distributor are exclusive contracts to the extent that your jobber or distributor
2717 does not handle any other brand of conduit?

A. Oh, no. They were not exclusive. Some of our distributors carried several stocks. One carried five stocks, that I know of, five different manufacturers' stocks.

Q. Will you state whether or not this is—to what extent that situation is true among your distributor agencies?

A. That varies according to how the price goes up and down. We might say that it is pretty—fairly well—fairly prevalent.

Q. Now, Mr. Bennett, with your letter of February 10, 1937, I believe you also enclosed your card No. 75; is that not correct?

A. That is right.

Q. Your card No. 75 is in evidence as Commission's Exhibit 62-Z-14, and the accompanying distributor agent service compensation is Commission's Exhibit 62-Z-12. Now, Mr. Bennett, will you look at these and state whether there is any change in the compensation to your distributor agent shown in these exhibits from what was given to the distributor agents prior to this time?

A. Yes, quite a little change.

Q. Now, will you state what that change consisted of?

A. I think I would have to have the other card in front of me to—

Q. Card 74 is in evidence as Commission's Ex-
2718 hibit 62-Z-3 and following.

A. We made quite a change in this picture, but it is not in evidence so that I could testify to it, as I have no comparison with the other one.

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Q. Mr. Bennett, would it refresh your recollection to look at your letter of February 10, 1937, on this?

A. Yes, indeed.

Q. Mr. Bennett, will you look at your letter of February 10, 1937, which is marked for identification Respondents' Exhibit 140-A to E, and see if that refreshes your recollection on the change in the distributors' compensation which appeared with your new card 75?

A. It does.

Q. Will you state what that was?

A. Largely in a measure of establishing a—a fixed price at which your consigned stock wholesalers would sell our consigned stocks.

Q. Was there any change in the wholesaler or distributor agents' compensation in this new—

A. Yes. We changed it from 5 percent to 6 percent.

Q. Now, will you state the reasons for your making that change?

A. The reason for making the change was in—I think apparently a matter of taxes.

Q. Taxes? Whose taxes?

2719 A. Used to be 5 percent. The wholesalers' taxes approximated one percent, and we changed it to six percent to cover that tax.

Q. That was to cover the wholesaler—

A. The wholesaler's tax, yes.

Q. —taxes?

Now, Mr. Bennett, did you have any understanding or agreement with your competitors about issuing that new rate of compensation to your distributor agents?

A. We did not.

Q. Did you have any understanding or agreement with your jobbers or the National Electrical Wholesalers Association?

A. No, we never did.

Mr. MacIntyre: I object. I did not have an opportunity to object before the answer was started on the question before this.

Trial Examiner Norwood: Do you want to object because the word "agreement"—

Mr. MacIntyre: Because both of them called for conclusions, and he stated a conclusion to the first question and the second one calls for a like conclusion. I object

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to both of them for that reason, and I move that the answer as given to the first one be stricken.

Trial Examiner Norwood: Every statement is a conclusion, but the use of the word "agreement" in an
2720 ordinary sense would not be an inadmissible conclusion. Objection overruled.

Mr. Houston: Would you read the witness the last question, please?

(Question read.)

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. Houston:

Q. Mr. Bennett, I call your attention to your price card No. 84 and refer you in particular to the reverse side of that card, which is in evidence as Commission's Exhibit 62-Z-82, and call your attention to the following provision in the price card. It states: "Terms 5 percent cash discount 10th proximo on net delivered price or 30 days net."

Now, Mr. Bennett, will you state whether or not a similar condition to that was not contained on your prior cards which are also in evidence here?

A. We have always had five for cash settlement on conduit.

Q. Will you state whether or not the 5 percent cash discount referred to there is taken by the jobber?

A. It is, because the average profit on conduit is 5 percent, and if he lost that five for cash he would go out of business.

Q. Is it always taken?

A. Yes. On the other hand, it represents a mea-
2721 sure of desirability to do business with the customer. If he doesn't take five for cash, which is 60 percent a year, we don't want to do business with him.

Q. Mr. Bennett, I show you Commission's Exhibits 318 to 330, which purport to be bids submitted to the Procurement Division of the—no, I beg your pardon. These are bids submitted to the Panama Canal by various conduit manufacturers, and Commission's Exhibits 334 to 364, inclusive, which purport to be bids—abstract of bids submitted by various conduit manufacturers to the Procurement Division of the Treasury Department. Now, I wish you would examine these, Mr. Bennett, and state whether any of the bidders listed on those exhibits were

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bidding as jobbers of your company. See if you can identify any that were your jobbers in making that bid.

Mr. MacIntyre: What is the last question?

A. Exhibit 318—

Trial Examiner Norwood: He asked you whether any of those were jobbers, those bidders there.

The Witness: Yes.

Mr. Austin: Not just jobbers. Jobbers of National Electric Products.

By Mr. Houston:

Q. Yes, jobbers of National Electric Products.

Trial Examiner Norwood: Answer the question.

A. The answer is "yes." Do you want me to go
2722 through each one of these?

Q. No.

Mr. Bennett, suppose you look at Exhibit 334, which includes a rather long list of bidders, and state which of the bidders on that opening were bidding as jobbers of your company?

Mr. MacIntyre: I object to the question. It calls for a statement by this witness as to how some bidders submitted their bids. Those bidders are not his company. He can tell us how he submitted his bid.

Mr. Houston: That isn't the question, Your Honor. I am just asking him which of these were jobbers of his company. I haven't asked him anything at all about how they submitted bids.

Trial Examiner Norwood: I thought the question said were bidders as jobbers of his company.

Mr. Houston: Yes.

Mr. MacIntyre: The witness is in no position to tell us whether or not those jobbers as of that date were submitting bids to the Federal Government upon some stock of theirs that they had purchased from him. He hasn't all those facts in his mind. He couldn't have.

Trial Examiner Norwood: I think he had better just give us the facts and let us see the relation there. He has said that some of those jobbers were bidders. If
2723 that jobber wasn't advised by him as to price or there was some transaction which connected him up especially with a jobber, why, he could give us that.

I will sustain the objection to the question in its present form. Let him point out what—

The Witness: On Exhibit 330—

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By Mr. Houston:

Q. Excuse me. The question has been overruled.

A. Oh, I beg your pardon.

Q Mr. Bennett, I ask you whether in that list of names of bidders that appear here are there any bidders' names who were at that time distributor agents of National Electric Products Corporation?

A. Yes.

Q. Now, Mr. Bennett, can you state whether or not any of these that you can identify as being National Distributor agents in submitting a bid to the Government were submitting a bid on the product of your company?

Mr. MacIntyre: Now, that is the same question I objected to a while ago.

Mr. Houston: I think it is asking him if he can state it. It isn't to state which they are.

Mr. MacIntyre: This man doesn't have the bids of that company to show what brands they were bidding on.

He most certainly hasn't put forward any foundation 2724 to show that he otherwise knew.

Trial Examiner Norwood: Well, if he knows any facts which would throw light on whether or not the jobbers were bidding on his special brands—

Mr. MacIntyre: As of that particular—on that particular—

Trial Examiner Norwood: Yes.

Mr. MacIntyre: —schedule, yes.

Mr. Houston: That is what I am asking.

Trial Examiner Norwood: Yes. Now, you can tell us that but testify from your own knowledge.

A. Yes. For instance, Exhibit 334 has to do with delivery in Puget Sound yard, Washington, the Naval Yard, Marianna and San Diego. The Graybar Electric Company usually bid on our stuff on that class of work.

Trial Examiner Norwood: You say they usually do? Usually do?

The Witness: Yes.

By Mr. Houston:

Q. Would you know whether or not in that case they bid on your stuff?

A. No, I would not know.

Q. Would there be any others about which you would have any specific knowledge?

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A. Not on this bid.

2725 Q. How about the American Circular Loom Company? Would you have any supervision of their activities in these proposals which I have shown you?

A. Yes. I had hundred percent supervision, definite supervision. They bid on this.

Q. And you would know the circumstances surrounding their bid to the Government in this case?

A. Yes. Yes.

Q. Mr. Bennett, will you examine those documents in as much detail as necessary to tell me whether or not National or American Circular Loom Company was ever the successful bidder on any of those abstracts of bids which are in evidence?

A. To be exact, I would have to check very carefully each one of these things, but from a general knowledge of the business I would say neither one of us ever got an order.

Mr. Houston: Your Honor, I believe that is a fact. I mean, it will save a little time. I have looked at them myself, and I think that is a fact. If there is any question about it I would be very happy to have the witness change his testimony, but I think that is true.

Trial Examiner Norwood: What was the answer?

(Answer read.)

Trial Examiner Norwood: Go ahead.

By Mr. Houston:

2726 Q. Now, Mr. Bennett, will you state whether or not the bids submitted by your company in these cases were made on the basis of your then current card? Would it be necessary for you to make a detailed examination to answer that question?

A. No. We had a policy that was effected there.

Q. What was it?

A. We would bid the card. We wouldn't bid anything else.

Q. In these cases here?

A. On Government bids.

Q. Does that apply to all Government bids?

A. Practically so.

Q. And by Government bids what do you mean? Bids of the United States Government or State governments?

A. You see, the Government is a different class of a

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buyer. I can't sell my goods to the Government on quality. They just—

Mr. MacIntyre: Now, wait a minute. I object to going into a discourse on this. The question has been answered.

Trial Examiner Norwood: He can give us all the reasons he has for bidding the card to the Government.

Mr. MacIntyre: He hasn't stated yet that he did. He stated that his policy was such that he would bid the card to the Government. Now, if he wants to change that answer to read that these bids in evidence to which his attention has been directed are examples of cases where
2727 he exercised his policy and did bid the card to the Government, then probably the last question and the respective answer are in order.

Trial Examiner Norwood: Objection is overruled. Go ahead.

By Mr. Houston:

Q. Mr. Bennett, I will ask you a new question to make it perfectly clear what you are answering.

Will you state why in the cases of these bids which are in evidence here your company bid its then current card on these Government bids?

A. There are two very definite reasons why we have that policy. The first one is that when the Government buys they buy white pipe or galvanized; they have no specifications that recognize a difference between any two pipes. It is low price gets the business. The second reason is that we have over 230, I think, distributor agents in the United States, and these are public bids, and if we quoted to get the business and sold our goods to the Government at a lower price than we are selling to our 220 customers, we would have considerable confusion and complaint and be charged with unfairness in trading with them. Being public bids they are open to all—

Mr. MacIntyre: Just a moment, please.

I move to strike that portion of the answer as to what would happen if he didn't quote the card to the
2728 Government. That is pure speculation.

Mr. Houston: Not at all.

Trial Examiner Norwood: Objection overruled. I think he has explained that for us. He is telling us his reasons.

Mr. MacIntyre: It is all right if you amend the answer to read that he thought that would happen, but he has

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stated as to what would happen. He has unqualifiedly speculated on what would happen if he had done something which he did not do.

Trial Examiner Norwood: It will be considered from the standpoint I suggested there.

Go ahead.

Mr. Houston: Would you give the witness the continuity of his answer there where he was interrupted, please?

(Answer read.)

A. —for observation, and with thousands of contractors, customers of hundreds of distributors, you can readily see the confusion and actual damage to our sales policy if we cut the price on Government bids and refused to sell at an equal price to our regular customers over a period of time.

By Mr. Houston:

Q. Mr. Bennett, when you submitted these bids which are in evidence here to the Government, did you expect to get those orders from the Government?

2729 A. No.

Q. I would like to ask you, then, Mr. Bennett, why, then, did you continue to bid on these things?

A. Unless you bid the Government drops your name from the list, and as a matter of form and courtesy we put through the bids to keep our name on the list.

Q. Now, Mr. Bennett, have you ever been a successful bidder on any Government job—and by "Government job" I mean proposals submitted by any agency of the United States Government?

A. Yes.

Q. Will you state whether or not you got that business on the basis of the bid of your then current card, or not?

A. To make a positive statement, I would have to look over our records, but I doubt very much that we ever sold on our current card.

Q. Do you recollect any bid which was—or any proposal on which you were a successful bidder—

A. I do not.

Q. —where you bid your current card?

A. I do not.

Q. Mr. Bennett, I show you Commission's Exhibit 364 and call your attention to bid No. 30, which is listed as

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being that of National Electric Products Corporation, and I call your attention to the fact that bid B, which is entitled in a legend to an f.o.b. factory bid, contains no bid
2730 from National Electric Products Corporation. Now, I call your attention to the fact that I believe you testified yesterday that you had never declined to submit an f.o.b. mill quotation, and I will ask you how you explain your testimony of yesterday in view of that exhibit which I called your attention to.

A. I would say this is very clearly and definitely a situation where we used good sense. We have been asked time and again to bid by the Government f.o.b. mill and f.o.b. point of destination. We have done lots of bidding that way. We never sold the Government. We never received an order from the Government at other than f.o.b. destination point. The Panama Canal is a destination point; Honolulu is a destination point.

Q. And is that the reason why in this particular case you did not submit the second bid B for an f.o.b. mill price?

A. I am—I have drawn a conclusion looking at that bid. I don't know the bid personally. I haven't read it.

Mr. MacIntyre: Your Honor please, if he is merely speculating here as to why he didn't bid f.o.b. mill in that instance, because speculation is worth nothing here at all in determining what the facts are.

Mr. Houston: Your Honor, it is the term "speculation" that is throwing us all off here. Anything based on this man's experience, I take it, is not speculation.

2731 Trial Examiner Norwood: That is a conditional motion. So I suppose he will have to read the answer. Read it.

(Answer read.)

The Witness: I didn't mean I hadn't read it.

Trial Examiner Norwood: Is that all of the answer?

(Record read.)

By Mr. Houston:

Q. Mr. Bennett, would you look at that bid and at that—

Mr. MacIntyre: No. Wait until we get a ruling here.

Trial Examiner Norwood: I shall ask the counsel to renew his motion when he has had an opportunity to see the record and specify what lines and on what pages the matter is he wishes to be stricken.

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Mr. MacIntyre: I ask that this line that contains the word "it is my conclusion."

Trial Examiner Norwood: That is explaining his previous question. You better read it—you read the record there and specify what lines you want stricken.

Mr. McIntyre: I have no objection to the answer, but that speculation as to that answer I do have an objection to, and that is this last answer,—

Mr. Houston: Well, let it go out.

Mr. MacIntyre: —"it is therefore my conclusion 2732 that I didn't bid here because of our policy."

Trial Examiner Norwood: Well, I will ask you to do just what I said.

Mr. Houston: I will agree to have it stricken out right now, Your Honor.

Trial Examiner Norwood: Go ahead. Proceed.

By Mr. Houston:

Q. Have you looked at that bid further, Mr. Bennett, and can you state now whether your prior answers were accurate in the light of your further investigation?

Mr. MacIntyre: Which prior answer are you referring to? The one about the conclusion?

Trial Examiner Norwood: He has already explained that to him very clearly.

A. There is no question in my mind but what we did not bid f.o.b. Pittsburgh. There is no question in my mind but what when we put this bid in we thought we stood as good a chance without quoting an f.o.b. Pittsburgh as we did to quote f.o.b. destination. The usual practice is to buy delivered.,

Q. The usual practice of whom, are you referring to?

A. For the Government to buy this conduit delivered.

Trial Examiner Norwood: Now, we will recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:05 o'clock p. m., December 9, 1941, the hearing was adjourned.)

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2735 PROCEEDINGS.

Trial Examiner Norwood: Hearing come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is now reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C. Please note the appearances.

Mr. I. A. Bennett resumes the stand.

Now, I have examined these pending proffers here of Exhibits 131—Respondents' Exhibits for identification numbered 131 to 137-B, inclusive, and 140-A to E. The objections are overruled and these are received in evidence as marked.

RESPONDENTS' EXHIBITS NOS. 131 through 134, 135-A, 135-B, 136-A, 136-B, 137-A, 137-B, and 140-A to E, inclusive, were offered and received in evidence.

Trial Examiner Norwood: Proceed.

I. A. BENNETT thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Houston.

Q. Mr. Bennett, we were speaking yesterday when we adjourned about these government bids. I would like to ask you, Mr. Bennett, whether your company in sub-
2736 mitting its bids to the Federal Government or any other public agency ever discusses the matter of its bids with its competitors before the bids are submitted?

A. No.

Q. Do you have any agreement or understanding with your competitors as to your bidding any particular price, as, for example, the card price?

A. None whatever, no.

2737 By Mr. Houston:

Q. Mr. Bennett, I show you a paper introduced in evidence as Commission's Exhibit 664-B, 664 being the consigned stock contract of your company which was put into effect in the early part of 1937, and ask you what this 664-B is?

A. This is a letter of July 21, 1938, on a second sheet of the National Electric Products Corporation suspending

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from our agent contracts the agent's obligation to maintain the price on our consigned stock, resale. That word "resale" is undoubtedly a mistake in this letter.

Q. What do you mean by the term "resale"?

A. Well, meaning the sale of the conduit in their
2738 possession belonging to us, which I have referred to as resale, where, as a matter of fact, it is the first sale.

Trial Examiner Norwood: What is the date of that?

The Witness: July 2, 1938.

Mr. MacIntyre: What is the number of the exhibit?

The Witness: 664-B.

(Thereupon a document was marked Respondents' Exhibit 141-A to D, inclusive, for identification.)

By Mr. Houston:

Q. Mr. Bennett, I show you a letter marked for identification Respondents' Exhibit 141A to D and ask you whether or not the language contained in Exhibit 664-B is not the same language which is contained in part on page 3 of Respondents' Exhibit, for identification, 141-A? Would you look at that sheet, please, which is 141-C?

A. The wording in this exhibit 664-B seems to be identical with my letter of July 21, 1938, Exhibit 141-A, B, C, and D. I refer to the distributor agents' selling of our product as resale all the way through this letter. I have always looked upon—and we sell a great many products other than consigned stock, and I refer to the manufacturer's sale as the first sale. In consigned stock I should refer to the distributor agent's sale not as a resale but as a first sale.

Q. You are referring to other products when you use the term—

2739 A. Resale.

Q. —"resale." You state you do have other products which are not sold in the manner in which conduit is sold; is that what I understood you to say?

A. Yes. It is rather difficult to write a letter to our consigned stocks agents some of whom may buy through consignment a hundred dollars worth of conduit, a thousand dollars worth of other products, the hundred dollars worth of conduit on the consigned stock basis, the thousand dollars on an outright sale basis. It is difficult to tell a jobber to cover that point between sale and resale.

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Mr. Houston: I offer in evidence Respondents' Exhibit 141-A to D.

Mr. MacIntyre: Respondents' Exhibit 141-A to D is objected to as incompetent, irrelevant, and immaterial under the circumstances that it is offered here.

Mr. Houston: Well, if Your Honor please, the purpose of offering this—

Mr. MacIntyre: It is cumulative also.

Mr. Houston: Excuse me. The purpose of offering this is to supplement the exhibit which Mr. MacIntyre put in, 664-B, which, as the witness testified, is a part of this letter—which contains an extract, I should say, from this letter which has been offered in evidence here as Respondents' Exhibit 141.

2740 Trial Examiner Norwood: Objection overruled. The exhibit is received in evidence, 141.

RESPONDENTS' EXHIBITS NOS. 141-A to D, inclusive, were offered and received in evidence.

By Mr. Houston:

Q. Now, Mr. Bennett, refreshing your recollection from that letter, will you state the reasons why you sent out to your distributors as a part of your consigned stock contract the Exhibit 664-B?

A. The new form of contract was sent out, I think, in February, 1937. In it was a restriction of sale of our consigned stock except at prices which we set for their sale. In the interval of over a year we endeavored to obtain those prices; but we were unable to do so, and had received letters from our salesmen and our agents telling us that it was impossible to sell our goods at the prices because of lower prices of competitive products. In one instance particularly the—a consigned stock jobber of ours on rigid conduit, a man who was obligated to me personally for assistance in years gone by and felt an obligation to buy from me, had even taken the trouble to come to Pittsburgh and show me lower prices that he was receiving from competitors on rigid conduit which he argued if he could accept would keep him in a competitive distributor market. After over a year of this sort of thing we felt that we could

2741 no longer maintain our position, and we released the distributors to meet their market as they sought, and incidentally this relieved us of our obligation with our distributors as well as theirs with us.

Mr. MacIntyre: Now, if Your Honor please, with respect to this last long answer, I ask that it be either stricken or limited so that the statements contained therein in reference to statements made to this witness by others or arguments made to this witness by others as to what has taken place be accepted only as something which was brought to his attention and upon which he acted, and not for the truth of the arguments—the soundness of the arguments or the truth of other statements made to him by these other outside parties.

Mr. Houston: If Your Honor please,—

Trial Examiner Norwood: Wait a minute.

Mr. MacIntyre: If it isn't limited, I ask that it be stricken, but I do ask that one of the two be done with that statement.

Mr. Houston: Your Honor please, I think if I would ask Mr. Bennett who it was this party was he talked to, that would relieve Mr. MacIntyre's mind.

Trial Examiner Norwood: I will reserve the ruling until you bring that out.

By Mr. Houston:

Q. Mr. Bennett, to whom did you have reference 2742 in your testimony?

A. This particular person was F. R. Eiseman, president of the Revere Electric Company, Chicago.

Trial Examiner Norwood: Is that one of your officials there that was reporting to you in the due course of business, or what?

The Witness: He is one of our distributor agents that handles our products.

Mr. MacIntyre: Mr. Eiseman happens to be a wholesaler and a jobber of electrical supplies in the City of Chicago. He is a member of the respondent, National Electrical Wholesalers Association.

Mr. Houston: He is also a National distributor agent, Mr. MacIntyre.

Mr. MacIntyre: I ask that his statements here when he is not here under oath not be taken for the truth of them. At least that such limit be placed upon this witness' statement concerning it.

Trial Examiner Norwood: Read the statement again.

(Answer read by the Reporter.)

Trial Examiner Norwood: I think that the request to limit the application of that testimony is very reasonable,

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that is, that it will not be considered as proof that the statements that his witness has cited as grounds for his action were not, in fact, true. As so limited I will permit
2743 the answer to stand.

By Mr. Houston:

Q. Now, Mr. Bennett, in your letter of—letter marked Respondents' Exhibit 141, in the first page of that letter you state that—in the fifth paragraph on the first page, that you are attaching hereto suggested resale sheets, and you go on to say "it is a suggested resale to be used by distributor agents." Would you state what you meant by that language, please?

A. In various districts we have, as in Chicago, New York, and San Francisco, Los Angeles, several consigned stock agents in the same city. It has always been our effort to stabilize the price among those distributors. We have always felt that if we had one consigned stock agent offering our goods at one price, another at another price, it was harmful to our trade-marks, and we offer a suggestion with the idea and hope that it comes somewhere near meeting a situation that all of our agents in that particular locality can observe.

Q. Was this resale that you referred to a suggestion, or was it a compulsion at which they had to sell?

A. We had just withdrawn the compulsion and offered a suggestion only.

Q. Now, Mr. Bennett, how long did this Commission's Exhibit 664-B continue to be a part of your consigned stock contract with your distributors?

2744 A. I would be unable to answer that without refreshing my memory, but I think it is in effect today. I don't know.

Q. Wonder if I could show you Commission's Exhibit 618. Mr. Bennett, will you look at Commission's Exhibit 618 and state whether that refreshes your recollection as to when you eliminated the provisions of Exhibit 664-B from your consigned stock contracts?

A. This is a letter dated May 24, 1940, in which we reinstated the conditions existing in the consigned stock agency agreement requiring the distributor to sell at our—at the price that we established.

Q. Was that the date, then, that you—

A. Yes.

Q. —elimited this 664-B—

A. Yes.
Q. —from your contract?
A. Yes.
Q. What was that date, please, again?
A. May 24, 1940. Made effective as of June 25.
Q. 1940?
A. 1940.
Q. Mr. Bennett, does your company maintain any list of recognized wholesalers or jobbers?
A. No.
Q. Do you know of any such list that is maintained
2745 and circulated among any of the members of this rigid steel conduit industry?
A. There isn't and never has been.
Q. Mr. Bennett, have you any interest at the present time in the I. A. Bennett Company of Chicago?
A. None whatever.
Q. Is that the company which you ran prior to your coming with National?
A. Organized a year before the National Company was formed.
Q. And who is in active charge of that?
A. My son, R. C. Bennett.
Q. R. C. Bennett. Mr. Bennett, I show you Commission's Exhibit 578 and ask you to look at that and state whether or not that letter was written by you after a conference with Mr. Blake on the subject that is referred to in that letter.
A. This is a letter written October 27 on our interoffice correspondence letterhead to our own sales people, not to our distributor agents. I don't know, I would have to refresh my memory, but certainly I doubt whether I had talked to Mr. Blake up to this time. Did I know him? At any rate I didn't consult with him on a matter of personal company interest.
Q. Do you recall having talked to Mr. Blake before the date of this letter about consigned stock contracts and similar matters?
2746 A. I certainly did not; silly.
Q. Mr. Bennett, has Mr. A. B. Austin or any representative of his company ever attended any meeting of the manufacturers of Rigid Steel Conduit at which you have been present?
A. No. No.

2747 Q. Mr. Bennett, I show you the exhibit. Commission's Exhibit 475, and ask you, from your knowledge of the operations of your company, whether any penalty was ever assessed against any one by reason of the fact that a—one of your specific building job contracts covering conduit was not in order?

Mr. MacIntyre: I object to the procedure. A question of that character can be put to the witness without showing him such papers. It is improper.

Mr. Houston: You mean he can't see his company's inter correspondence?

Trial Examiner Norwood: I can't see any possible harm that it would do there. It is not suggesting any answer. Objection overruled.

A. Well, Mr. Examiner, this is so simple—

Trial Examiner Norwood: Well, now, don't explain that letter. He has asked you for matter of fact, and that has nothing to do with the letter.

A. There is no penalty. There is no penalty except cancellation. This is written to our salesmen.

Trial Examiner Norwood: I asked you not to refer to that letter.

2748 The Witness: Oh, yes,—

Trial Examiner Norwood: Now, strike that "This is written to our salesmen."

By Mr. Houston:

Q. Was that—

Trial Examiner Norwood: Wait a minute. Please read that question and answer the question.

By Mr. Houston:

Q. Mr. Bennett—

Trial Examiner Norwood: Wait a minute.

Mr. Houston: I beg your pardon, sir.

Trial Examiner Norwood: Read the question.

(Question read by the Reporter.)

Trial Examiner Norwood: He is asking you for a matter of fact as to whether any penalty—

The Witness: No.

Trial Examiner Norwood: —mentioned in there was ever—

The Witness: No.

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By Mr. Houston:

Q. Mr. Bennett, was that letter written by Mr. Kim to your salesmen under your direction?

A. Yes.

Q. Did you tell him what to say in that letter?

A. Yes, sir.

2749 Q. Did you tell him to use the word "penalty"?

A. I did not.

Q. Will you explain how it got into that letter?

A. Well, I may make a mistake. The greatest penalty a salesman can have is a contract—

2751 Q. Mr. Bennett, do you know of any penalty which has been assessed on any of these contracts of yours which have not been found in order?

A. Penalty of cancellation only.

Q. Is that the only penalty, to your knowledge, which has been enforced?

A. Yes. Yes.

Trial Examiner Norwood: That has been enforced, do you say?

The Witness: Yes.

2752 Q. Has that been done with any regularity? With what degree of regularity has that been done?

A. Quite frequently.

Q. Would you know if any other penalty had been inflicted by you or anyone in your organization?

A. Yes, sir.

Mr. MacIntyre: I move that the answer be stricken. It is all right for the witness to state that he believes he has reason to know, but to state unqualifiedly that he knows all the facts is certainly going pretty wide.

Trial Examiner Norwood: Why not? Why not? Why can't he state that he knows?

Mr. Houston: It is perfectly apparent that Mr. MacIntyre has fallen in love with the word "penalty". He thinks it has a very sinister connotation, and I can see him arguing it to the Commission. I want to take the sting out of it.

Trial Examiner Norwood: Read the question and answer.

(Question read by the Reporter.)

Trial Examiner Norwood: Objection overruled. Would you know that?

The Witness: Yes, sir.

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By Mr. Houston:

Q. Why would you know that, Mr. Bennett?

2753 A. Because these are brought to my desk for signature and ruling in each particular case.

Q. Mr. Bennett, will you turn to Commission's Exhibit 565, please? Will you look at that letter, sir? I would like to ask you some questions about it.

Trial Examiner Norwood: What is that pending question?

(Question read by Reporter.)

Trial Examiner Norwood: Go ahead. If you will ask him the question maybe then he would know what to look for.

Mr. Houston: The whole thing describes the situation, Your Honor. It is a letter written by Mr. Bennett.

A. I have read most of it. Go ahead. I think I can—

By Mr. Houston:

Q. All right. Mr. Bennett, was this a letter written by you?

A. Yes, sir.

Q. And to whom was this letter sent?

A. This was sent to our sales department, our own sales organization.

Q. Now, what company was the American Circular Loom Company? Is that the one you referred to as your wholly owned subsidiary?

A. Yes.

Q. Do you recall when you acquired that—the

2754 ownership of that company?

A. No, I don't remember.

Q. Well, would it be early in your company's history? Would that be accurate?

A. Oh, yes 20 years ago.

Q. Did they have a manufacturing plant at any time, sir?

A. Yes, sir.

Q. Where was it?

A. Kenilworth, New Jersey.

Q. Did they manufacture conduit there?

A. They did.

Q. Was that plant ever disbanded by you?

A. It is still there. We still own it.

Q. Is it an operating plant?

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A. Not as a conduit plant.

Q. When did it cease operating as a conduit plant?

A. Probably about 1922, '23.

Q. Do you recall the circumstances under which the conduit manufacture was discontinued there?

A. Yes. We found that by producing their conduit for them in our plant we would increase our tonnage, thereby decrease our cost per ton, and save considerable money.

Q. Those were the reasons which influenced you in closing the Kenilworth conduit plant?

A. Yes.

2755 Q. And did you continue to manufacture conduit for the Circular Loom Company?

A. Up to December 31, 1936, I think it was.

Q. When was Circular Loom dissolved? Do you know, Mr. Bennett?

A. I think as of January 1, 1937.

Q. And what happened to their product that they had been manufacturing—that you had been manufacturing for them?

A. We continued to sell their product, conduit, under their trade-name Xduct and Electroduct. Later we dropped the Electroduct, which was a black enameled conduit.

Q. Why did you dissolve the Circular Loom Company?

A. Because it was losing too much money for us, but it was just an additional sales organization. Under the trend of business in—prior to 1930 a great many additional sales organizations were organized with the idea of getting more of the products, selling more for some one mill. We felt that the American Circular Loom Company was a supernumerary in our sales, and additional sales company selling the same tonnage.

Q. Now, Mr. Bennett, will you refer to page 2 of that letter? And will you refer to the paragraph about the center of that page which contains the sentence: "We are working for the betterment of markets, and this move is made with the idea of bettering conditions." Will you state what you meant by that language? What mar-

2756 kets are you talking about, first?

A. Why, I think the preceding paragraphs explain that. Working for—I don't see that. Page 2; is that?

Q. Yes. May I point it out to you?

A. "The regular jobbers to whom we have been sell-

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ing will have no complaint. The National policy is well understood. We are working for the betterment of markets, and this move is made with the idea of bettering conditions for the regular jobbers with whom we have been doing business."

That is all we are interested in.

Q. What markets are you talking about, sir, when you—

A. Their markets, our jobbers' markets, and our markets.

Q. And your what, sir?

A. For our jobbers' markets and our markets. Our jobbers and ourselves are a unit in the distribution, manufacture and distribution of conduit.

Q. Now, Mr. Bennett, will you refer to the next to the last paragraph on page 2 in which you state: "And yet National must hold itself within the accepted standards of competition and limit itself to the wholesalers' merchandising procedure." Will you state what you mean by "the accepted standards of competition?"

A. Well, the National Company perhaps might refuse to quote where certain manufacturers only quoted.
2757 Their product we might not regard as being in keeping with our standards. When I say "limit itself to the wholesalers' merchandizing procedure," ever since 1905, the date of our organization, we established a policy of distribution through wholesalers and did not sell direct. We have continued that policy since 1905.

Q. Well, what standards of competition? Whose standards, may I ask you that, are you referring to in standards of competition?

A. Our standards.

Q. You mean your company's standards?

A. Yes. That is explained in our first paragraph of that letter.

Q. Now, Mr. Bennett, will you turn to Exhibit 566? I think if you just—(indicating).

A. Yes.

Q. Is this a memorandum from you to Mr. Kim?

A. It is.

Q. Now, in this memorandum you state that you are issuing a new card and you ask Mr. Kim to please mail this as usual to your competitors. Now, is it customary for you to mail your price cards to your competitors, Mr. Bennett?

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A. It has been so since 1905 when we organized.
Q. You have done that?
A. Yes.
2758 Q. Why have you done that?
A. They get price lists anyway. We would rather have them know what our policy is rather than have it come to them through some other agency that might not be as accurate.
Q. Do you receive price cards from your competitors?
A. Some of them.
Q. Do you receive it from all of them?
A. No.
Q. Is there any agreement or understanding between you and your competitors to exchange price cards?
A. No, sir.
Mr. MacIntyre: I object to the question.
Trial Examiner Norwood: Overruled. Answer the question.
A. No.
(Thereupon a document was marked "Respondents' Exhibit No. 142", for identification.)

By Mr. Houston:

Q. Mr. Bennett, I show you a paper marked for identification Respondents' Exhibit 142, and ask you if you will look at that and state what it is.
2759 A. This is a letter written on the Rigid Steel Conduit Association letterhead from Pittsburgh, Pennsylvania, April the 7th, 1937.
Q. By whom was it written?
A. I wrote the letter as Chairman of the Board of Directors.
Q. And to whom was it sent?
A. Sent to the Board of Directors of the Rigid Conduit Association.

2761 By Mr. Houston:

Q. Mr. Bennett, in various of the letters written by you, which are in evidence here, you refer to
2762 the problem of warehouse stocks. Now, will you state how that was a problem which affected your company?
A. As a matter of costs of doing business.
Q. What were these warehouse stocks as they were used in connection with your business?

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A. Well, we have warehouse stocks at different points. It costs us considerable money. They are used to distribute our products. We have them on all products. We have warehouse stocks in New York, Chicago, Atlanta, Philadelphia, San Francisco, St. Louis, Minneapolis. I think that is about all.

Q. Do you have those still?

A. Yes.

Q. Did you ever have any more at a prior date?

A. I don't think so, no.

Q. You still maintain the warehouse—

A. Yes.

2763 By Mr. Houston:

Q. Mr. Bennett, do you maintain consigned stocks in the—do you have consigned stocks and consigned stock distributors in these territories where you also maintain warehouse stocks?

A. We gradually have withdrawn our warehouse stocks as we have increased our consigned stock distributors. That is natural.

Q. Why do you say it is natural?

A. Well, for instance, in Chicago we used to maintain a stock there that covered 40 or 50 carloads of stuff, conduit. At that time distribution was limited, and as distribution grew, for instance, today we have distributors in districts 30 to 100 miles from Chicago, where in those days we did not have. As this distribution grew we added consigned stocks in these districts and finally closed up our warehouses on conduit. It is not necessary.

2764 Q. Have you discussed in any of the meetings of the Association the problem of warehouse stocks?

A. Not in the meetings, I don't think, no. I don't remember.

Q. Is this a problem which is common to the industry?

A. It is quite a common problem with every manufacturer, I think.

Q. Now, in some of these letters I note there is a report from various of your representatives in a given territory as to the maintenance of warehouse stocks by one of your competitors in that territory?

A. A warehouse stock is competition.

Q. Why?

A. Because of the ability of competition to deliver to,

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let us say, new jobbers as they come into the picture or quicker delivery to the contractor at the jobber's request.

Q. Are you obliged to meet your competitors' maintenance of warehouses?

A. Well, not entirely, no.

Q. How do you handle that situation?

A. I—through our distributor agents, carrying sufficient stocks in our distributor agents. Understand a competitor may not have the ability to obtain the distribution that we have. Therefore, he may find reason for having a warehouse stock where we wouldn't have one.

Q. Now, Mr. Bennett, do you make any direct sales
2765 by National direct to a consumer out of your warehouse stocks?

A. No.

Q. Do you make any sales—are any sales made out of these warehouse stocks?

A. No.

Q. Well, what are they maintained for? How are they used?

A. Well, we haven't any on rigid conduit except in San Francisco.

Q. All right. How is it used today?

A. It is used to replenish consigned stocks or assist in emergencies along the coast, from Los Angeles, San Diego, you might say, to Seattle.

Trial Examiner Norwood: Well, has that always been the case?

The Witness: We have always had that stock there, yes.

Trial Examiner Norwood: I mean have you always refrained from selling direct to customers—

The Witness: Yes.

Trial Examiner Norwood: —from your warehouses?

The Witness: That was our original policy. We have never broken it.

Q. Does that apply to sales other than warehouse stocks as well?

A. Yes.

2766 Q. Now, Mr. Bennett, do you make any charge to your distributor agents or to your consumers for delivery out of these warehouse stocks?

A. In San Francisco we charge five percent extra to cover the cost, or part of the cost of hauling the conduit into the warehouse and hauling it out.

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Q. Does that five percent cover the cost of doing so?
A. No. Perhaps half of it.
Q. Mr. Bennett, is there any agreement or understanding among you and your competitors about the elimination of warehouse stocks?
Mr. MacIntyre: I object.
Trial Examiner Norwood: Overruled.

By Mr. Houston:

Q. Will you answer that?
A. No.
Q. Has there been any such agreement in times past about this matter?
Mr. MacIntyre: I object. That certainly is taking in a lot of territory, as to whether anyone at any time has ever entered into any agreement concerning these things.
Trial Examiner Norwood: Wait a minute.
Mr. Houston: I will withdraw the question if that is the objection, Your Honor.
Trial Examiner Norwood: Yes.

2767 By Mr. Houston:

Q. Mr. Bennett, has there ever been any agreement between you, your company, and any of your competitors concerning the elimination of warehouse stocks?
Mr. MacIntyre: That is objected to also.
Trial Examiner Norwood: Yes. Overruled.
A. No.
Trial Examiner Norwood: Now, the counsel may have his objection to every similar question. It might save him some trouble.
Mr. MacIntyre: That is, to every question of the nature of this last one?
Trial Examiner Norwood: Which contain the word "agreement."
Mr. MacIntyre: That is, any question that inquires as to whether he had an agreement?
Trial Examiner Norwood: Yes.
Mr. MacIntyre: Well, with that understanding I will not find it necessary to state objections here.
Trial Examiner Norwood: That is, that contains the word "agreement," the objection being on the grounds that the use of the word "agreement" by the witness would be the statement of an opinion or a conclusion—an opinion or a conclusion.

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Mr. MacIntyre: May we inquire whether that ruling will apply as to all future answers also? It will save having it discussed.

2768

Trial Examiner Norwood: That is why I mentioned it.

Mr. MacIntyre: Yes. All right.

Trial Examiner Norwood: That question will have to be asked a great many times. It will save the respondents some expense. That refers, of course, to the use of the word "agreement" as the counsel has employed it here.

By Mr. Houston:

Q. Mr. Bennett, will you look at exhibits, Commission's Exhibits 603 and 604, and tell me whether or not the subject of warehouse stocks is discussed in those letters?

Mr. MacIntyre: That is objectionable. The exhibits show whether or not it is discussed.

Trial Examiner Norwood: I think it is rather useless.

Mr. Houston: Well, Mr. Bennett—all right. They state on their face. I agree.

By Mr. Houston:

Q. Mr. Bennett, why were you discussing with Mr. W. J. Drury of the Graybar Electric Company the matter of warehouse stocks in your letter of June 17, 1938, in evidence as Commission's Exhibit 603?

A. Because Mr. Drury is a customer.

Q. You mean Mr. Drury or his—

2769 A. His company, Graybar Electric.

Q. Were they a distributor of National Electric Products Corporation?

A. Yes.

Q. And is the exhibit—

A. They are telling me what a competitor has done.

Q. And why were you interested in knowing that situation?

A. Perhaps I wasn't as much interested in knowing it as he was in telling me in order to get me to meet their terms. (Laughter.)

Mr. MacIntyre: I move that the last answer be stricken. It is all right for the witness to tell us how interested he was in telling it to the other man, but to measure the interest of the other man against his, it seems to me is going a little far.

Trial Examiner Norwood: Well, technically maybe so, but I think that really does explain the witness' attitude to that question—that entire matter. Objection overruled.

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By Mr. Houston:

Q. Mr. Bennett, will you look at Exhibit 580 which, I believe, is a letter from you addressed to your salesmen (referring to exhibit). Now, will you look in particular at page 2 of that letter and at the top of page 2 is the statement: "It has been a one-price policy treating all
2770 wholesalers alike and selling goods on our printed price sheet, and this policy has been maintained with little deviation."

Now, will you state what you mean by that language?

A. The policy of the National Company since its organization had been to sell on its price list willy nilly, regardless of competition. During a period of years following the 1929 peak of business we lost 50 percent of our percentage of the total volume of conduit business. It took me several years to sell the president of our company the idea of changing our policy to meet prices. About 1934 I was successful in making the sale, and we changed our policy.

Q. Well, what was your new policy that you adopted at that time?

A. The new policy was to meet our competitors' prices in the field as we found them.

Q. Did that include selling off your card?

A. That is what I am talking about.

Mr. MacIntyre: That is a good example of a leading question and the damage it does. I had no opportunity to object.

Trial Examiner Norwood: Did you answer that question?

(Question read by the Reporter.)

Trial Examiner Norwood: Go ahead.

2771 Mr. MacIntyre: Mr. Houston was telling him what he was talking about.

Mr. Houston: You are telling me, Mr. MacItnyre.

Trial Examiner Norwood: The counsel will have to object to those in time.

Mr. MacIntyre: It is impossible some times.

Trial Examiner Norwood: If the witness answers with undue haste I will strike it.

The Witness: Shall I slow up?

Trial Examiner Norwood: Well, you must not answer questions when one of the counsel objects until I tell you to.

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By Mr. Houston:

Q. Mr. Bennett, will you look at Exhibit 581, and in particular will you look at the first page of the letter in the paragraph which starts: "National's one printed price list policy has been in existence over a period of thirty years with very little interruption."?

By Mr. Houston:

Q. Mr. Bennett, is there any connection between the language "one printed price list policy" in this letter and the language in the letter, 580, stating it has been a one-price policy?

A. Same thing. Means the same thing.

2772 Q. In other words, your answer is to the—

A. One is to our salesmen and the other is perhaps in a little different form to our distributor agents.

Q. And would your answer that I asked you in connection with 580 apply to similar questions relating to 581?

A. Yes.

Mr. MacIntyre: Now, of course, all of his answers to all of these leading questions, therefore, are answered now in the same way as to this. In other words, the leading questions are put again without having to restate them.

Mr. Houston: How many leading questions?

Trial Examiner Norwood: But I don't think that he is asking—

Mr. Houston: It is all right with me, Judge. I am willing to take all week here.

Trial Examiner Norwood: —questions that are harmfully leading. Proceed.

The Witness: Shall I answer?

Mr. Houston: Get the state of the record there, please.

Trial Examiner Norwood: He answered the last question, didn't he? Read the last question and answer.

(Previous record read by the Reporter.)

Trial Examiner Norwood: Proceed.

By Mr. Houston:

2773 Q. Will you look at Exhibit 583, Mr. Bennett, which, I think, has been identified as a letter from you addressed to your salesmen dated February 17, 1937?

Mr. MacIntyre: What is the number of that, please?

Mr. Houston: 583.

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2774 By Mr. Houston:

Q. Mr. Bennett, will you look at the third paragraph of the first page of that letter—

Trial Examiner Norwood: What is the exhibit number?

2775 Mr. Houston: 583, sir.

Trial Examiner Norwood: All right.

Q. —and will you look at the language stating that you have received letters and this particular statement: "They help us to develop a picture which tells us how much resistance you encounter in talking with your jobber customers." Now, what was the resistance which you and your salesmen encountered in putting in effect your so-called new sales plant which was sent out with your letter of February 10, 1937?

A. Competition.

Q. Will you give an example of the resistance or the competition, as you put it?

A. Yes. Why, one of the first things that occurred was a flood of letters from our salesmen telling us that sales agents and salesmen from other conduit companies said "Hooey. Don't pay any attention to it." Inasmuch as the fact that the Graybar Electric Company, we will say, Chicago, is a large distributor, carries five different brands of conduit on consigned stock, I consider it a serious resistance when competition tells them a story different than the story our salesmen tell them in trying to sell them an idea in promoting the sale of our goods. That has to do with price, terms, conditions, and quality.

Q. Did any manufacturers—I beg your pardon.

2776 Strike that. Did any of your former distributor agents refuse to sign your new forms of consigned stock contract?

A. Yes, quite a few. One in particular.

Q. To which one do you refer?

A. McCarthy Brothers and Ford, Buffalo.

Q. Why did they refuse?

A. They had been our rigid conduit consigned stock agents over a period of years, were a very valuable customers, but McCarthy Brothers and Ford were owners of a contracting department, and under this new contract and the letters that accompanied it giving it conditions under which the new contract would be signed, their contracting department could no longer receive the distribu-

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tor's benefit as distributor's commission, as they did not perform the act of distribution.

Q. And did they sign your new contract?

A. They did not.

Q. And did you sell them conduit?

A. We haven't sold them since.

Trial Examiner Norwood: From whom did they buy?

The Witness: Youngstown Sheet & Tube Company and Walker Brothers, Conshohocken, Pennsylvania. Those two I know of.

Q. Will you look at the last paragraph, the first page of that letter? Will you look at the last paragraph, and particularly at the language in which you state "We
2777 are quite sure that our competitors will be inclined to follow us." What do you mean by that language?

A. Well, I believed very sincerely that this was the most ethical and the best contract that we had ever drawn. They had always followed everything pretty nearly that we had ever put out, even the language out of my mouth if they could catch it quick enough. (Laughter.) I believed in that thing. I was sold on it a hundred percent. I believed that they would follow it.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

By Mr. Houston:

Q. Do you know, Mr. Bennett, how many of your competitors did follow you?

A. Well, I think about half of them.

Q. You mean about half of the conduit manufacturers?

A. Yes.

Q. Mr. Bennett, I show you Commission's Exhibit 585 and ask you to look at that and state if you can what it is.

A. Well, off hand, it is a letter to our—

Q. Written by whom?

A. —salesmen on our interoffice correspondence, written by myself.

Q. Was it sent to them?

A. Sent to our salesmen.

2778 Q. Will you look at the first sentence of the first paragraph of the letter which states "The new merchandising plan on conduit as worked out is something the jobbers wanted." Mr. Bennett, prior to the date on which you put that plan into effect had the jobbers made any demand or request on you to put into effect such plan?

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A. No, not—

Q. What do you mean by that language, "something the jobbers wanted"?

A. I had worked with the jobbers and sold them for 30 years.

Q. Whose jobbers?

A. National's. Talked with them all over large territories, one end of the coast to the other.

Q. Will you refer—

A. I believed that I was qualified to express their general opinion, their thoughts.

Q. Had you ever been a jobber yourself?

A. Yes; sales manager for the largest jobber in the United States.

Q. Largest jobber of National?

A. Of electrical supplies in the United States. That was before National was formed.

Q. What company do you refer to?

A. Electric Appliance Company.

Q. Now, will you look at the third paragraph of 2779 that letter, and in that you state "Already we have seen a lot of manufacturers follow that plan." What do you mean by "a lot of manufacturers"? How many did that include?

A. Well, if it was three it was a lot.

Q. Do you know how many did follow your plan?

A. No, I don't remember, but I would say, for information if you want it, that if the major companies followed the plan it was good. But in this particular case the major companies didn't follow the plan. The smaller companies, some of them followed it.

Q. What do you mean by the expression "if the major companies followed the plan it was good"? To what are you referring by "it"?

A. The plan might have been good because it would have been passed upon by their intelligent sales department and perhaps their attorneys.

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2780 **Afternoon Session.**

1:45 P. M.

Trial Examiner Norwood: Proceed.

I. A. BENNETT thereupon resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Houston.

Q. Mr. Bennett, will you look at Commission's Exhibit 590, and in particular at the second page of that document, and state what that document is, please, first?

A. This is an interoffice letterhead, letter addressed to our salesmen.

Q. And by whom was it written?

A. I wrote the letter.

Q. Was that sent to your—did you say to whom that was—

A. This was sent to our salesmen, dated May the 20th, 1937.

Q. Mr. Bennett, looking at the second and third pages of that letter, on those pages you use the term "stabilized markets." Will you state what you mean by that term?

A. Yes. A respect for our—our pricing system.

Q. What markets are you talking about?

A. The National Company's.

Q. And what do you mean by "stabilized markets"?

A. Well, we have a standing in the community, I think, a little better than anybody else in the conduit busi-
2781 ness. What I mean by that is that we deal with distributors, contractors, throughout the country. Unless they have a respect for our prices—our pricing system—

Trial Examiner Norwood: Do you think that the business of one firm with its customers constitutes a market?

The Witness: Oh, absolutely. You see, if I have 225 consigned stock distributors and they have 10,000 contract customers, and if my distributors have a demoralized market on my share of that conduit, there isn't any confidence in any distributor's customer, and we are injured very definitely by lack of stability in our market.

I am talking about our market, National's market. That

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is all I am talking about in this letter. This is a sales letter to our salesmen where I am trying to sell them and put enough stamina in them to sell goods. Rather a long letter.

2782 I might say that page 3 of this letter covers practically what I have testified to.

Q. Mr. Bennett, will you look at Commission's Exhibit 593, please, which purports to be a letter from somebody to somebody? Will you state to whom that was sent, by whom it was sent, and the details like that?

A. This is a letter on interoffice letterhead addressed to I. A. Bennett from our New York manager, F. J. Kennedy.

Q. Now, Mr. Bennett, will you refer to the first paragraph of that letter, which describes the situation in connection with the Williamsburg Power Plant on which, according to the letter, Kalischer was the electrical contractor, and I refer you in particular to the language: "You had a commitment from the General Electric Company in September at which time approximately one-quarter carload of General Electric had been delivered on the job at card 72. Their promise to withdraw this price was not fulfilled and the entire four and a half cars were billed at card 72."

A. This job, Williamsburg Power Plant, was naturally bid on by various electrical contractors. Kalischer had our quotation on the conduit for this job. When he was awarded the contract we received from the Graybar Electric Company, New York City, a contract on this job.

Q. Was that signed by Kalischer?

A. Yes. Later we were advised by our New York
2783 office that another conduit was going on the job. We also had letters from our distributor, the Graybar Electric Company, in which they accused another company of selling at a lower price on this job. This would mean, in our ordinary procedure of doing business, that this Kalischer undoubtedly had more than one contract in with more than one concern, and, therefore, we took it up with the General Electric Company to find out if they had a contract. Their reply was that they did not have a contract, and I assumed that they would not fill the order. However—

Q. Why did you assume that, Mr. Bennett?

A. Because they didn't have a contract. However, as it later developed, they did fill the order completely, and

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still the General Electric Company, as the General Electric Company, did not know they had filled the order. This was one of those constant things that we were up against on these protection contracts. The General Electric Supply Company of New York had protected Haetzler & Buehler, electrical contractors. Haetzler & Buehler didn't get the contract, but the General Electric Supply Company, having the contract registered with the General Electric Company for the quantity at a low price, transferred the protection by reporting the sale in from their consigned stock, and then later resold it to Kalischer.

Q. Did you take any efforts to enforce your contract that you stated you had with Kalischer?

2784 A. No.

Q. Why didn't you, Mr. Bennett?

A. No use. We never was able to get an attorney to agree that we could sue on one of these contracts.

Q. Why was that?

A. Well, it generally meant that it would cost probably ten times the value of the job to carry the suit through, and we would have to prove a lot of things that would involve upsetting our trade relations with the customer, and if we sued him he would never be our customer again.

Q. Mr. Bennett, will you look at Commission's Exhibit 594 and state what that is.

A. This also is an interoffice letterhead addressed to W. C. Robinson, Jr.

Q. Who is W. C. Robinson, Jr.?

A. Vice-president, assistant to the president — my assistant for a long period of time, and he is now active under me as sales manager. Signed by Kennedy of our New York office.

Q. Is he the person who wrote the last exhibit to which you referred?

A. Yes. He is our New York manager.

Q. Now, are you familiar with the situation which is referred to in that letter?

A. Yes. Yes.

Q. Will you state what that situation is—or was?

2785 A. We—this has to do—

Mr. MacIntyre: Now, just a moment. I object to the witness answering that question, if he is familar with it—that is, for him to answer the question while he is reading the other man's letter. If he is familiar with it,

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it isn't necessary for him to ascertain and learn about it from the other man's letter.

Mr. Houston: Would Your Honor take a look at that letter, please?

Trial Examiner Norwood: Now, that is a letter that is addressed to your assistant; is it?

The Witness: Yes, sir.

Trial Examiner Norwood: Can you give us the circumstances?

The Witness: Yes, because in this particular case I talked with the contractor myself, and this is merely one letter out of several, and the main story was my then dealings with the contractor in question.

Trial Examiner Norwood: Well, go ahead and explain it. Objection overruled.

A. This contractor, Hanson Electric Company, had a contract on the Christopher Columbus High School. Our New York manager reported to me that the Garland Manufacturing Company's agent, a man by the name of O'Brien, had quoted a price below the contract price at which he handled Hanson Electric Company and
2786 that the Hanson Electric Company asked us to reduce our price on this job. I was in the New York office and Mr. Hanson came over to our New York office to talk to me, brought in by Mr. Kennedy. Mr. Hanson presented his story and showed where the Garland Manufacturing Company, the conduit manufacturer, according to my judgment from the story, had not made a lower price, but the agency had, by splitting his commission, and I felt that the agent was buying one of our contracts.

Q. What did you do?

A. I insisted that Hanson should stand by the contract. He pleaded that he had to make money. I took it up with the Garland Company and accused them of buying one of our contracts, interfering with a contract, a legal contract, a contract that was in force. The Garland people agreed that they would withdraw, if any such transaction was on record. It took some time for the Garland people to find out just what the transaction was.

Q. Now, this letter refers to the complete cooperation of the Garland Manufacturing Company.

A. Yes. Mr. Garland told me that under no circumstances would he be a party to breaking any other manufacturer's contract.

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Q. You have referred to contracts in answer to the questions relating to this exhibit and to the prior Exhibit 593. Are those the specific building job—

2787 A. Specific—

Q. —contracts which are in evidence here as Commission's exhibits?

A. Specific building contracts such as we have—I have testified to before.

Q. Mr. Bennett, who is A. J. Worthman in your company?

A. He is one of our pricing clerks. He has charge of our export department and makes quotations; also handles our—a portion of our service.

Q. Is he in the department which is under your supervision?

A. Indirectly. Directly under Mr. Kim.

Q. He is directly under Mr. Kim, and is Mr. Kim under you?

A. Yes.

Q. Mr. Bennett, does your company ever make any quotation on unfinished conduit or couplings?

A. Oh, yes, sometimes.

Q. Are these quotations contained in your regular price cards?

A. No.

Q. And how do you make quotations on these materials?

A. Based on costs.

Q. I mean, do you write a letter, call up on the telephone, or how do you customarily do that?

A. Well, it all depends. If the customer writes direct to us, we generally figure up the price we want for the

2788 goods and send it to our agent in that territory, and he makes the quotation.

Q. Do you receive many of these inquiries for—

A. Not very many, no.

Q. Mr. Bennett, will you refer to Commission's Exhibit No. 600? Look at that and state what that is, please.

A. It is a letter dated May 23, 1938, to our consigned stock distributor agents written by myself.

Q. Mr. Bennett, will you look at the third paragraph of the first page of that letter and state what you meant by the language "We have believed that this merchandising plan assured us of a better regulated distribution under a more stable market condition." Will you state in particular

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what you mean by the term "more stable market condition"?

A. Well, it is tied with the regulated distribution. Our distribution is through certain definite distributor agents.

Q. What market are you referring to in this letter?

A. I am talking about their market.

Q. Their market is what?

A. Their market on Sheraduct conduit.

Q. Sheraduct conduit. Is that your product?

A. That is our product. I think this covers the situation.

Q. Will you look at the second page of that letter, and in particular at the first paragraph at the top of the second page, and at the language which reads: "Notwith-
2789 standing, our distributor agents feel that our merchandise plan has operated to a greater stabilizing effect," and so forth, and I will ask you to what extent your merchandising plan had operated to a greater stabilizing effect?

A. Well, that is a long story.

Q. Well, will you make it as short as possible?

Trial Examiner Norwood: Make it short. To what extent, he said.

A. Our success in selling the best distributors in the country the most goods has been based upon our ability to give them a brand of goods and a quality and, say, a merchandising plan—

Trial Examiner Norwood: Wait a minute. I asked you to answer this question.

Read the question.

(Question read.)

Trial Examiner Norwood: Can't you just come to the point there and just tell us that?

A. Let us say greater confidence among our distributors in their offering our goods to the public.

By Mr. Houston:

Q. Greater confidence in what, Mr. Bennett?

A. Greater confidence in our merchandising plan, in each other, our distributors—we have four distributors in a town. Each one of them are under direct contract
2790 with me to sell Sheraduct conduit at a definite price, not cut each other's market, not offer for more nor for less. That is a stabilizing effect that affects the integrity of our sales merchandising plan.

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Q. Mr. Bennett, will you look at Commission's Exhibit 602? Will you state what that is, please.

A. This is interoffice correspondence on a letterhead provided for that purpose, dated June 16, 1938, to C. J. Kim, subject, cable order, signed by H. C. Jones, office manager of the New York office.

Q. Do you use the term "cable orders" in your business?

A. We do.

Q. Is that understood generally by your people as, for example, Mr. Kim and Mr. Jones?

A. It is.

Mr. MacIntyre: May we have the question?

Trial Examiner Norwood: Read the question.

(Question and answer read.)

By Mr. Houston:

Q. Now, will you state, Mr. Bennett, what is meant in your organization by the term "cable orders"?

A. Armored cable orders, orders for armored cable.

Q. Mr. Bennett, will you look at Commission's Exhibits 629 to 633, which purport to be some correspondence between you and Mr. Fred Eiseman, addressed at the 2791 Revere Electric Company in Chicago? I wish you would look at these letters. I would like to ask you a few questions about them.

(After a pause.) Do you recall that correspondence, Mr. Bennett?

A. Yes. I haven't seen it for a long while. I have got to read it.

Trial Examiner Norwood: Proceed.

Q. Mr. Bennett, do you recall the circumstances under which that correspondence was exchanged between you and Mr. Eiseman?

A. I think I do, yes.

Q. Who was Mr. Eiseman?

A. He was secretary and treasurer, apparently, of the—of the Revere Electric Company.

Q. Is he the man that you have referred to previously in your testimony here?

A. Yes. I called him president. I thought he was, but this correspondence shows that he was secretary and treasurer.

Q. Now, would you state, referring to the letter of Mr.

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Eiseman to you of February 2, 1938, whether you are familiar with the situation which is described in that letter?

A. I was and am, yes.

Q. Now, what did you understand Mr. Eiseman was trying to do in this correspondence to you?

A. Was trying to sell me the idea of selling him conduit cheaper, at a lower price.

2792 Q. And did you accede to his requests?

A. I did not.

Q. Do you recall how long after this correspondence it was that you sent out your letter in which you—as you stated in the letter, released your so-called resale control on your consigned stock contracts?

A. I think probably two or three months after this correspondence.

Q. In making the decision to release that resale, were you in any way influenced by this correspondence from this Eiseman?

A. I certainly was, yes.

Q. In the letter of June 10, 1938, from you to Mr. Eiseman you state that—in about the fifth paragraph of the first page that you had had a conversation with Drury. Who was Drury?

A. June 10th, fifth paragraph?

Q. Yes. That is Exhibit 632.

A. Drury is manager of the Graybar Electric Company in New York.

Q. Was Graybar a distributor agent of National at this time?

A. Yes.

Q. Had you discussed with Mr. Drury the problems which Mr. Eiseman raises in his correspondence with you?

A. Yes. Same problem, price too high.

2793 Q. Do you know whether either Mr. Drury or Mr. Eiseman had any official position in the National Electrical Wholesalers Association?

A. I don't remember. They may have.

Q. Were you writing to them at this time as being representatives of that Association?

A. I never wrote a letter to a representative of the Wholesalers Association, that I remember.

Q. Will you look at the second page of Exhibit 632, the next-to-the-last paragraph of the letter—and I have reference to the language: "If Bob Bennett hasn't got Triangle

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straightened out there is only one answer." Now, will you state what organization you refer to as "Triangle"?

A. Our distributor agent, Triangle Electric Supply Company, Chicago.

Q. And what was the situation you were trying to straighten out with them?

A. They had gone on a rampage and were trying to meet their competition as against their contracts, and if they had not changed I would have canceled their contract.

Q. Did they have one of the consigned stock contract forms—

A. Yes.

Q. — that are in evidence here?

A. Yes.

Q. Will you state the full name of the Triangle
2794 Company again, sir?

A. Triangle Electric Supply Company.

Q. Would you know their address, Mr. Bennett?

A. It is rather a big institution, I think the largest in Chicago. I don't know. I really don't know.

Q. They are in Chicago?

A. Oh, yes. Yes, indeed, and very definitely in the wholesaling district.

Q. Do you know if they have any connection at all with the Triangle Conduit & Cable Company—

A. Oh, no.

Q. —Inc., one of the Respondents in this case?

A. No. No.

Q. Now, Mr. Bennett, I call your attention to the second paragraph of your letter to Mr. Eiseman of June 10, 1938, and Commission's Exhibit 632, and ask you what you meant by the language in that second paragraph in which you wonder how Mr. Eiseman would like to be chairman of the Rigid Steel—of the Rigid Conduit Association, and you state: "In the first place, you would be discredited four or five times a day, and in the next place everybody would be sore at you, and in the next place 75 percent of them would be doublecrossing you." What do you mean by the language "75 percent of them would be doublecrossing you"?

A. I might have to get impolite if I got excited on
2795 this. In the first place, the chairmanship of the Rigid Conduit Association was a difficult job. He was a target for everything that any salesman for any company wanted to say. When—

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Trial Examiner Norwood: Just tell what was meant by "doublecrossing."

The Witness: Well, they might say they would attend a meeting and didn't show up. I would have to think this over pretty carefully probably to think of all the things I had in mind on that date, June 10, 1938.

By Mr. Houston:

Q. Is that an example of one of the things you meant by the term "doublecrossing"?

A. I might give you an illustration.

Q. All right.

A. In an attempt to—

Q. If the Judge will stand for it.

Trial Examiner Norwood: I think we might shorten this. We are very deliberate with this examination here. I think we will do better by shortening it up a little.

The Witness: Well, this illustration is short. They all agreed one time to bring in their engineering data on threads immediately, promptly. They actually brought them in nine months afterwards.

By Mr. Houston:

Q. Is that what you had in mind when you re-
2796 ferred to the term "doublecrossing"?

A. That is one thing, and, in addition I suggest that maybe he would like to have the job as chairmanship.

Q. Yes. Well, I just asked you about your use of the term "doublecrossing."

Trial Examiner Norwood: That was one or two of the many things?

The Witness: Yes (Laughter).

By Mr. Houston:

Q. Mr. Bennett, in the minutes of the Rigid Conduit Association, which are in evidence as Commission's exhibits here, it appears on the minutes that at one point in the spring of 1937 you tendered your resignation as director or as a member of the board of directors of the Association, and in July of 1938 you finally resigned as a member of the board of directors. Now, will you state the reasons why you tendered your resignation in the spring of 1937 and why you finally resigned in the summer of 1938 as chairman?

A. Well, I have always been pretty busy. We have a

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great many other things to do besides conduit. Conduit doesn't represent but a very small part of my time per day, in my regular office day, and any office that I took like that would be, naturally, more or less bothersome and undesirable, but finally the illness of my wife, which was very serious, wound up in a little breakdown of my own. I was off the job for quite a portion of the time.

2797

Q. Was that during this period that I have referred to in the question?

A. Yes. I only worked half days for a while; off two months. It interfered with my doing the job.

Q. Mr. Bennett, I call your attention to a provision in a consigned stock contract form that was in use by your company prior to 1937, and it is in evidence as Respondents' Exhibit 123, and I call your attention to the provision at the top of the page numbered 123-C, which reads as follows: "The consignee shall not sell any of the goods to itself or to any company representing it, for the purpose of resale." Will you state why that provision was inserted in that contract?

A. Well, this was in the first contract ever written on consigned stock, of rigid conduit in the United States.

Q. Do you mean that provision was?

A. Yes. And that was to prevent the company from buying up, speculating on our product, on any advancing prices.

Q. Now, Mr. Bennett, I show you Commission's Exhibit 664-A, and call your attention to the provision under the heading "Agreement of the Distributor Agent" under section 6, which reads in part as follows: "Further, if the distributor agent is the sole or part owner of a subsidiary unit, the business of which requires the consumption of rigid steel conduit, or if the distributor agent is entirely owned or in part by a contracting or consuming company, the business of which requires the consumption of rigid steel conduit, the distributor agent agrees not to sell rigid steel conduit to such subsidiary or affiliate at prices less, nor upon selling terms or conditions of sale, than those furnished by the manufacturer under the provisions of clause A-14," and ask you the purpose for which that provision was inserted in that contract.

2798

A. That was put in there very definitely for the purpose of eliminating the possibility of a contracting subsidiary

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from having lower prices than other contractors in a given territory, thereby creating a restriction or preferred situation.

Q. Mr. Bennett, I show you Commission's Exhibit 538-A and B and ask you if you ever received a copy of that letter.

A. I think I probably did. I don't remember. I think I have seen it before.

Q. Now, I call your attention now to Commission's Exhibit 591-A to D. Would you look at 591 and state what that is.

A. This is a letter written September 24, 1937, on inter-office correspondence letterhead, subject, rigid conduit, addressed to our salesmen.

2799 Q. Was that letter written by you and sent to your salesmen?

A. Yes. I dictated it myself.

Q. Now, will you examine the part of the letter which starts: "Outlining some of these points we quote as follows," and state whether or not the points which you quote as follows are based on a letter a copy of which you stated you received, which is in evidence as Commission's Exhibit 538?

A. Well, I—I would rather be inclined to believe that this letter of September 24th was my method of sales that Mr. Blake refers to in his letter of September 23rd.

Q. Are you quoting in substance Mr. Blake's letter of the—

A. In substance.

Q. —23rd in your letter of September 24th? Is that what you intended to do in that letter of September 24th?

A. I think Mr. Blake is quoting the substance from my letter.

Q. Mr. Blake's letter is dated September 23, 1937, and yours is dated September 24, 1937. Now, would you say that Mr. Blake is copying you or you were copying Mr. Blake?

A. Well, I am particularly proud of the fact that these had been my convictions over a number of years, and I put them in effect by that letter that I sent out. I doubt whether I was quick enough on the trigger to send that letter out the next day after he had dictated one in New York to me. Maybe I did.

2800 Q. You don't recollect accurately the chronology of those letters?

A. No, I don't.

Q. Mr. Bennett, will you state whether or not freight is a substantial part of the cost of rigid conduit delivered of a point of use or resale, which is at all remote from the place of production?

A. Yes, indeed. It is the heaviest—one of the heaviest things in the electrical industry to deal with.

Q. Now, Mr. Bennett, will you state what your experience and observations has been in your business as to whether a lowering of the price of rigid conduit has been followed by any increase in your total sales of conduit?

Trial Examiner Norwood: Read that question.

(Question read.)

Trial Examiner Norwood: Go ahead.

A. No. Conduit is not bought until it is sold for the job.

By Mr. Houston:

Q. You would state, then, that a lowering of the price does not affect the consumption of the product; is that—

Mr. MacIntyre: Just a moment.

Trial Examiner Norwood: Wait a moment.

Mr. MacIntyre: I think the other question and the answer was a little too far, and this is beyond the question. It is incompetent.

2801 Trial Examiner Norwood: Objection sustained.

Mr. MacIntyre: I ask that if any answer of the witness was taken it be read.

Trial Examiner Norwood: He can give his actual experience on that matter, which he has done.

Mr. Houston: Would you read the last question and answer, please?

(Record read.)

Q. Mr. Bennett, does your company have costs that are incurred in connection with your conduit business which remains constant under varying rates of production?

A. Yes.

Mr. MacIntyre: I object. We are going into matters that are irrelevant and immaterial, and we shouldn't string this thing out by covering such fields as those.

Trial Examiner Norwood: He can show variations of cost, variations of costs as compared to the various variations of price.

Mr. MacIntyre: He is talking now about variations in elements of cost.

Trial Examiner Norwood: Yes, he can do that. Objection overruled.

Mr. Houston: Would you read that question, please?

Trial Examiner Norwood: Read it.

2802 (Question read.)

A. The answer is "yes."

By Mr. Houston:

Q. Mr. Bennett, do such costs constitute a substantial part of the cost of production of conduit under a normal rate of production?

A. They do.

Trial Examiner Norwood: You mean they do?

The Witness: Yes, sir.

Q. Now, Mr. Bennett, what considerations enter into the selection of—into the selection and purchase of black enameled conduit or of galvanized conduit by any prospective user?

Mr. MacIntyre: There has been no foundation laid to show why any answer should be given to that question.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Answer that, if you know the answer.

A. I do know the answer. It is in two sections: First, grounding; second, preferred—zinc-treated is preferred because it is erosion proof.

By Mr. Houston:

Q. Are these the considerations which influence a purchaser to purchase one kind or the other?

2803 A. They influence the purchaser to buy zinc-treated pipe over black enameled.

Q. There are some purchasers who prefer black enameled to galvanized?

A. Yes.

Q. What considerations—

A. Temporary construction mostly, short period of life of the building, such as taxpayers, as we call them, buildings put up for a short period of service.

Q. Mr. Bennett, based on your experience and contacts with your conduit customers, what would you say as to their desire with regard to buying on a delivered price basis?

Mr. MacIntyre: I object to the question. It calls for speculation, conclusion, and attempting to get from this witness the operations in the minds of others.

Trial Examiner Norwood: Read it.

(Question read.)

Mr. MacIntyre: It can't call for anything but hearsay.

Trial Examiner Norwood: Objection sustained. You may give any facts which indicate their desire. You can even tell what they said to you.

Mr. Houston: Well, Your Honor, I think that question goes to his understanding of the situation which I think he is competent to testify to.

2804 Trial Examiner Norwood: Well, let him give us the facts. Make it factual.

By Mr. Houston:

Q. Well, Mr. Bennett, based on your experience and knowledge, will you state what the facts are with respect to the purchase of conduit on a delivered price basis?

A. My experience covers a period of 40 years, 25 of them dealing in the field as a salesman. There never was such a thing as a customer wanting to order the f. o. b. mill price.

Q. Now, Mr. Bennett, in the operation of your business and in the sale of conduit and in your methods of selling and quoting conduit, is there any understanding or agreement, or has there ever been, between you and your competitors as to the adoption and maintenance of these methods of doing business? And I include in that a reference to the use of the basing-point system, various contract forms, various methods of pricing.

A. I will have to have that question read over. It seems to cover—

Trial Examiner Norwood: Are you through?

Mr. Houston: Yes.

Would you read that question, please?

Trial Examiner Norwood: Read it to him.

(Question read.)

Trial Examiner Norwood: Answer the question.

2805 A. I have never heard a discussion on Pittsburgh basing. When we adopted the Pittsburgh basing plan two-thirds of these companies weren't in business.

Trial Examiner Norwood: Now, just answer that ques-

tion directly. Have you ever had any understanding or agreement—

The Witness: No.

Trial Examiner Norwood: —with your competitors with respect to those methods?

The Witness: No.

By Mr. Houston:

Q. You feel free at any time to change your method of doing business as you have done it in the past?

A. I do, and I have done so.

(After a pause.)

Trial Examiner Norwood: Proceed.

Mr. Houston: Cross-examine.

Mr. MacIntyre: Is there any direct by any of the others?

Mr. Houston: Oh, I beg your pardon. Is there any—

Trial Examiner Norwood: Cross-examine.

Cross-Examination by Mr. MacIntyre.

Q. Mr. Bennett, since you have had all of the discussions that you have had with representatives of your com-
2806 petitors during the course of meetings which you have attended and which they have attended, and since you have maintained membership in the associations which they have maintained memberships in, over the period of years that you have—running back to twenty-some years, I believe you have stated; is that correct?

A. Right.

Q. —have you, since all of that has occurred, found any desire on your part to change your method of pricing?

A. No.

Q. You have no desire to give up your basing-point pricing method since you have had all those meetings; have you?

A. They have not changed my mind in any respect by arguing for any other system that was simpler or better.

Mr. MacIntyre: I move that the witness' answer be stricken and ask that he be required to answer my question.

Mr. Houston: I suspect he got an answer to that.

Trial Examiner Norwood: I think he answered it.

Mr. MacIntyre: May we have the question read, and his answer?

Trial Examiner Norwood: I don't think it is necessary to read it?

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Mr. MacIntyre: May we have the question?

Trial Examiner Norwood: Your question went to whether or not these meetings caused him to change
2807 his mind about some of his methods.

Mr. MacIntyre: May we have the question read, if Your Honor please? I don't believe that is the question.

Trial Examiner Norwood: Read it.

(Question and answer read.)

Mr. MacIntyre: Now, he has attempted to explain an answer which he has not given to the question.

Trial Examiner Norwood: Well, you can ask him questions if that doesn't—

By Mr. MacIntyre:

Q. Since you have attended—Mr. Bennett, since you have attended all of these meetings with your competitors you haven't had any desire, then, to give up your basing-point system of pricing; is that correct?

A. Never thought of it.

Q. Haven't had any desire to give it up since you have attended those meetings?

A. Never thought of it.

Q. Mr. Bennett, is a price—strike that.

Is a price market stable when movements—price movements in the market do not occur either up or down?

Mr. Houston: I object to that, Your Honor. I think we were prevented from going into any general economic stuff. If this is restricted to Mr. Bennett's markets, I think it is all right. He has testified as to his markets.

2808 Trial Examiner Norwood: Yes, and he may bring out this witness' understanding of the word "market." He may do it by that question or any other question.

Mr. Houston: I think he is referring to prices.

Trial Examiner Norwood: He may do it by inclusion or exclusion.

Go ahead.

The Witness: What is the question, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. I don't believe I am good enough economist to answer that question. Are you referring to the conduit market now?

Trial Examiner Norwood: Would you understand that to be a stable market when price didn't change?

The Witness: Not necessarily, no. No.

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By Mr. MacIntyre:

Q. In other words, if you have a price market in which there is a rigid price and over a protracted period of time it does not change either up or down, you don't know whether that is stable or not; is that correct?

A. I don't believe I understand your question. I don't get it.

Trial Examiner Norwood: Now, I think that that is a very clear question.

The Witness: Well, perhaps I am a little dense.

2809 Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Is that right or not?

The Witness: (Laughter.) It probably is.

By Mr. MacIntyre:

Q. Your answer is you don't know?

Trial Examiner Norwood: No; his answer was it probably is.

The Witness: Probably.

Mr. MacIntyre: I misunderstood it.

Trial Examiner Norwood: I will ask the witness to straighten that out now. What was your answer?

The Witness: "Probably."

By Mr. MacInytre:

Q. That it would be a stable market?

A. Probably.

Q. What does the word "stable" mean to you?

A. Well, when I pick up the newspapers and read the Metal Journal with regard to the price of metals I see the price of copper marked 12 cents, 12 cents, over a period of time, that looks like a stable price.

Q. And what does the word "stabilized" mean to you?

A. Well, it has a different meaning, according to the way it is used.

Q. Well, in your usual use of it?

2810 A. In my using it I am talking about stabilizing our prices, having our prices maintained as we set them.

Q. Without being cut or dropped?

A. Without any deviation from the price that we establish for our goods.

Q. And a stable price, then, is one that—as you said

about the copper at 12 cents. It doesn't go down below 12 cents?

A. That is right.

Q. It stays at 12; is that correct?

A. That is right.

Q. And when you use those terms "stable" or "stabilized" without qualification, you use them in the usual sense to mean that; is that correct?

A. I don't know what your usual sense is, but I am talking about the National Electric Products' method of selling their goods.

Q. Well, I am anxious to get your meaning now.

A. Yes.

Q. But in your usual sense of using them that is what you mean?

A. That is right.

Q. What elements of your cost do you say have no direct relationship with your volume of production?

A. Overhead and burden.

Q. All right. Now, what elements constitute or go 2811 to make up your overhead? Just tell us about—

A. Sales, advertising, missionary work, office management, sales management, branch offices, warehouses, traveling expenses, telephone, electric light.

Q. That constitutes your overhead?

A. Overhead.

Q. Anything else?

A. Well, I— there might be some other items in it that I haven't got in front of me.

Q. Labor isn't?

A. No.

Q. Raw materials are not?

A. No.

Trial Examiner Norwood: Some of those overheads vary; don't they?

The Witness: Oh, they vary off and on, but, you see, if we are running capacity we have a division of the overhead and burden in that capacity. If we are running half capacity, it is double the amount per ton.

Trial Examiner Norwood: It varies, then, with the output?

The Witness: Yes, based on capacity.

By Mr. MacIntyre:

Q. That is, all of these that you named as your overhead would vary with output to a degree?

2812 A. Yes.

Q. And the degree with which they would vary would, in itself, vary in one situation as distinguished from another set of circumstances; is that correct?

A. Circumstances alter cases in business as well as in anything else.

Q. From your experience you would say "yes" to that question?

A. Yes.

Q. If prices on armored cable of a capacity, that is, which carry a wiring of capacity equal to the capacity of wiring allowed by the underwriters' standards to be carried in one-half inch conduit were to approach the prices on one-half inch conduit, even black enameled conduit, what, in your judgment, based on your experience with your trade, would be the preference, or has been the preference, of your trade as to whether it would take armored cable or the conduit?

A. It would take armored cable, because the cost of installations is less than 50 percent of the conduit.

Q. I know, but I have assumed that the prices of the two approached each other to practically the same level.

A. And the price of installation—of installation would approach each other to the same level?

Q. I am talking about the conduit and the cable now, the prices of that.

2813 A. I understand your question, but here is armored cable and here is conduit. My first answer to your question is that the cost of installation of installing armored cable is less than half what it is on the conduit. Now, you asked the question if the two approach each other. It is an impossible question. They can't.

Q. Well, let us assume that they do.

A. (Laughter.) My dear fellow!

Trial Examiner Norwood: Now, wait a moment. You were asked to answer this question under the assumptions given you. You are not asked to criticize those assumptions. Do you understand that?

The Witness: It is pretty hard to. I will agree with you.

Trial Examiner Norwood: You have given testimony here—

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The Witness: I will agree with you.

Trial Examiner Norwood: For several days here, and this counsel has a right to have your answers on these assumptions here. Suppose you answer that, assuming that the cost of installation were the same and that the cost of the material were the same.

The Witness: Mr. Examiner, I couldn't possibly answer that question, never having had any experience nor there ever having been any similar experience in the world
2814 like that.

By Mr. MacIntyre:

Q. Now, suppose that we substitute for the armored cable e.m.t. Would your answer be the same?

A. No.

Q. What is your answer, then?

A. E. m. t. is a competitor of rigid conduit, and if e. m. t. price was the same as half-inch rigid conduit, the preference would be for rigid conduit.

Q. I believe you have already told Mr. Houston as between galvanized zinc-covered conduit as against black enameled, it is usually a preference for the zinc?

A. That is the history of the business; yes, sir.

Q. That is, it is a preference of the customer for that.

A. Yes, for the zinc.

Q. Isn't it also your experience, Mr. Bennett, that price levels of conduit which you have known have driven off the market and out of use certain types of installation which have been used in lieu of conduit, rigid steel conduit?

A. No. No. That is not so.

Q. It is your testimony, then, that wherever insulated cable has been used and on installations where rigid steel conduit could have just as well been used, that rigid steel conduit has never been substituted and replaced it, substituted for and replaced the insulated cable?

2815 A. Your question now involves engineering and usage. It couldn't be intelligently replied to, except by an application of the engineering knowledge and usage of the purpose to which the material was to be put.

Q. And you have no knowledge as to the use of this insulated cable on installations where rigid steel conduit could have been used?

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A. No particular, definite knowledge, but a general knowledge that it has been done.

Trial Examiner Norwood: Do you know of any instances where one could be substituted for the other?

The Witness: I couldn't name any, no.

By Mr. MacIntyre:

Q. Well, from your general knowledge.

A. From my general knowledge; yes, indeed.

Q. That it has been used where rigid steel conduit could have been substituted for it?

A. Oh, yes.

Q. And what about the price levels of the two? Rigid steel conduit is considerably higher than the insulated cable, isn't it, on a per-foot basis, of like sizes?

A. I think—I don't think that there has ever been a discussion at which I have been present nor the introduction of any information in my office or in our company where any comparative information has been given of that kind.

2816 Q. I am asking you now for your knowledge, through these—that you acquired through these long years of your experience—

A. Yes, 48 years.

By Mr. MacIntyre:

Q. Now, refer to Respondents' Exhibit 117, which is the sample of the—sample of conduit made out of old newspaper impregnated with what material?

A. Asphaltum, tar product.

Q. Now, you told us that that was competitive with conduit. It is sold at a lower price than conduit, isn't it?

A. Very much.

Q. That is, rigid steel conduit?

A. Yes.

Q. Now, referring to the Johns-Manville product, Respondents' Exhibit 118, that is, I believe you said, not manufactured from steel?

A. No. It is a fibrous non-metallic content.

Q. And you told us that that was competitive with
2817 conduit. That is also sold at a lower price than rigid steel conduit of like size?

A. Very much less, yes.

Q. If prices on those two items should approach the

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prices of rigid steel conduit of like size, rigid steel conduit would be substituted in large part for them; don't you imagine—strike that.

Wouldn't you say, based on your experience in the industry?

A. It would depend largely upon the installation. Freight has a good deal to do with it. A carload of that shipped by freight would be one-tenth the cost of conduit.

Q. But in places where freight hauls are short, freight would be minimized?

A. Then again—pardon me.

Q. Go ahead.

A. Then again you understand that this is non-metallic. Now, there are very few installations of importance or size in a building like this where they would tolerate not grounding this, and in order to ground it they would have to run a separate conductor of a sufficient size on the inside of this to ground the cables inside with the earth, and you would have to take that into consideration in the costs.

Q. And by the time—

A. Rigid conduit is self-grounded.

2818 Q. And by the time the grounding is included in this, if rigid steel conduit prices were changed just somewhat downward, it would probably be selected in all instances over and above this?

A. Probably have to go down 50 percent.

Q. You mean after the cost of the grounding is included in this?

A. Well, that is—that would be difficult for me to prove, but I can only make a wild guess.

Q. But there would not be 50 percent difference in the prices today if you include the grounding necessary to use this; would there? We are referring to Respondents' Exhibit 117.

A. I really don't know. I wish I could testify to that. I would enjoy testifying to the exact story on that. I don't know.

Q. Well, now, directing our attentions to your company, the National Electric Products Corporation,—

A. Yes, sir.

Q. —it is a wholly owned subsidiary of the Phelps-Dodge Corporation; isn't it?

A. Not now.

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Q. When did it cease to be one?

A. We bought our company back I think it was 1937.

Q. In other words, it was a wholly-owned sub-
2819 sidiary of Phelps-Dodge Corporation until 1937?

A. Yes.

Q. In what part of the year?

A. That is January, I think it was. I would have to refresh my mind. I don't know.

Mr. Houston: Mac, would you like the accurate information? I don't want to interrupt you, but I can give it to you if you are interested.

Mr. MacIntyre: I don't believe it is worth while to go into it.

By Mr. MacIntyre:

Q. Mr. Bennett, I am showing you Commission's Exhibit 716. Now, you told Mr. Houston a short while ago that no customer within the many years of your experience ever wanted an f. o. b. mill price?

A. That is right.

Q. Can you tell me, if you know, how you can reconcile that statement of yours with the fact that the U. S. Government, as is shown by Exhibit 716, asked for f. o. b. mill prices in their bids?

A. Why, yes, I can understand that. They asked both ways, but they haven't come to us and asked for an f. o. b. price alone.

Q. Well, you say that no one ever wanted an f. o. b. mill price quotation.

A. That is my experience, sir.

2820 Q. Well, how do you reconcile that statement with the fact that 716 shows that the U. S. Government did ask for f. o. b. mill prices?

A. But they also asked for f. o. b. delivered price.

Q. Let us direct our attention to the fact that they did ask for f. o. b. mill prices. Now, how do you reconcile, when you direct your attention to that fact, the statement that you made to Mr. Houston that no customer, in your experience, ever asked for an f. o. b. mill price?

A. I have already testified to the fact that the Government has often asked for mill price and also delivered price, and they always buy on delivered price.

Q. That doesn't answer my question.

Trial Examiner Norwood: Well, did you say that they

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didn't want an f. o. b. price or that they didn't ask for it?

The Witness: I said that I—I think I said that no one ever wanted an f. o b. mill price; wasn't much excuse for it.

Trial Examiner Norwood: You didn't mean to say, then, that none of your customers asked for it; isn't that right?

The Witness: Oh, they may have asked, but I don't believe, in my experience, that very many customers ever actually were serious about asking for a f. o. b. mill price.

2821 By Mr. MacIntyre:

Q. Well, if those that have asked you for an f. o. b. mill price would have been serious about it, how do you reconcile the fact that they did ask for it and were serious about it with the statement you made to Mr. Houston that they never wanted such a price?

A. That is my belief. That is my belief.

Q. In other words, those that asked you for such and were serious about it, you still have a belief that they did not want it?

A. Yes, because in the final analysis they buy their conduit at the delivered price. It is easier for them. That is all there is.

Q. Do you see any relation in doing that to the fact that when you give them an f. o. b. mill price and your competitors give them f. o. b. mill prices, they are so high that when the freight is added that it costs the buyer as much or more to get it to the place of use than if they bought on a delivered price?

A. Oh, that would be utterly untrue; utterly untrue.

Q. Well, I show you again, Mr. Bennett, Commission's Exhibit 716. Will you show me and demonstrate for the record, after examining that exhibit, wherein the Federal Government, through what f. o. b. mill prices it did get there, could have taken advantage of them and se-

2822 cured the conduit at place of use at a cost equal to or below that which was quoted by Rigid Steel Conduit manufacturers on the basis of a delivered price?

A. Well, without going into a thorough analysis of this, which I would be pleased to do, I would say, from my experience and knowledge of the business, that the differ-

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ence between the f. o. b. mill price and the f. o. b. Mare Island or Puget Sound, or whatever other destination there is, would be exactly the difference in the transportation between the mill and that point.

Q. In other words, the quotations as made on an f. o. b. mill price did not give the Government any advantage at all because it was the equivalent of a delivered price less the freight; is that correct?

A. Well, let me state my testimony. My testimony is that the f. o. b. mill price is identically the same as the f. o. b. destination point price less the transportation charges.

Q. And that is your experience in the industry, that when f. o. b. mill prices—

A. Oh, not only my experience, but it is my belief. I don't believe for a minute that my conduit is worth any more money in any particular spot in the United States than it is at Pittsburgh, based on the freight or the service given.

Q. Do you see any difference in the value of your conduit over the value of—no.

Do you see any difference in the value of your 2823 conduit when it is compared with the conduit of Walker Brothers, which is manufactured at Conshohocken, Pa.?

A. That is—oh, my yes. Our conduit is much better. (Laughter.) Much better.

Q. Why is it, then, that you have stated that you found it necessary to quote at exactly the same price as Walker Brothers in your price card?

A. The difference between convincing the customer.

Q. In other words, you have never been able up to this time to convince your customers that your conduit is any better than Walker Brothers'; is that correct?

A. Oh, yes, we have done that every once in a while and get business from him at even money.

Q. Well, have you been able to convince them so that you could get more money for your product because of its better value?

A. No, not during the past 10 years, the depression or repression.

Q. In other words, you haven't convinced your customers that yours is that much better?

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A. It has suffered terribly during the last 10 years of the depression on the sense of values.

Q. If a customer knew the facts of your conduit being better than the conduit of the Walker Brothers, would you say that he would be more inclined to buy your
2824 product at the same price, as a general rule?

A. We like to think so, but every once in a while Walker convinces the customer otherwise and we lose.

Q. Does he attempt to do that through the issuance of price cards carrying the same prices as you quote?

A. No. I think he generally sells a little under.

Q. Well, the price cards in evidence here are the same as yours, Mr. Bennett. They are the ones I direct my attention to and your attention.

A. Those are not the factors that place the business, either one of them.

Q. Can you answer why you and he issue price cards carrying exactly the same price quotation?

A. Why, yes.

Q. Why?

A. If he issued a price card 10 cents less than this we would follow him. Why should we have one higher? Why should we have one lower?

Q. And all of that, despite the fact that there is a difference in your products?

A. Oh, sure. Sure.

2825 Q. And would the answers that you have given to me in response to my last few questions about your price cards apply equally with respect to the identity or uniformity of the prices which are quoted and bid, as is shown by Commission's Exhibit 716?

A. No, not at all.

Q. Well, why wouldn't the reasons which you have given me in your last answers to my last questions concerning the price cards apply equally with respect to the bids appearing on Commission's Exhibit 716?

A. And the last questions you asked me also applied to the difference in the material.

Q. Walker Brothers—

A. When the government puts out a request for a bid of this kind, it asks prices from every known manufacturer that they can find. They recognize no difference in black enamel; they recognize no difference in zinc. There is only ruling factor in accepting quotations on bids of this

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character, and that is the lowest price. We have no attempt—we have no opportunity to show that our goods are a little bit better than the other fellow's on Government stuff. The law won't permit it, and we don't—we don't—

Q. So a shaving of the price becomes an all important factor in these bids as to who gets the business; is that correct?

2826 A. The low man gets the bid.

Q. It is the all important thing,—

A. Yes.

Q. —in your experience?

A. Yes.

Q. Mr. Bennett, I am referring to the bids which have been made by your company and by its competitors, which are shown by Commission's Exhibits 716 to 737, inclusive, to have been made at the same level in many instances. Can you explain why that in those instances they were exactly the same on any other basis than your use of the cards, price cards by you and your competitors and the method of figuring those prices being the same, as you have outlined to Mr. Houston on direct?

A. Well, to do that I would have to be more than a mind reader. I don't know.

Q. You don't have any other explanation?

A. That is it.

Q. Now, referring again to these bids which are in evidence as Commission's Exhibits 700—tabulations of which are in evidence as Commission's Exhibits 716 to 731, and which you have stated you bid the card—

A. No; I didn't do that. I don't think I have ever seen those bids, 716 to 731.

Q. Mr. Houston showed you tabulations of the 2827 same bids on direct.

Mr. Houston: Mr. Bennett doesn't know that. If you tell him the facts I think he would understand what you are talking about.

Mr. MacIntyre: Yes.

By Mr. MacIntyre:

Q. And you told him the reason for the uniformity as well as the result of your bid was that you used the card?

A. Yes.

Q. Now, the record shows, Mr. Bennett, that you and your competitors made those bids through the years 1934

to 1941. How do you reconcile those bids and the statements you made to Mr. Houston concerning them with the statement that you made this morning to him to the effect that since 1934 your policy has been a new one, one of selling and quoting off the cards instead of quoting on the cards? Now, will you please tell us how you reconcile that testimony?

A. I—I don't know the particular bid or the particular item, but in a general statement I would say maybe we didn't want the business. That has occurred so often when these matters have been brought in to my desk.

Q. Are we correct, then, in our understanding of your testimony here that wherever you do not want to be competitive for a piece of business you use your price cards in quoting prices?

2828 A. No. No. Sometimes I quote 5 off the card, and I am pretty sure that my competitors are quoting 5 and 2½ or 10 off.

Q. In those instances where you quote on the card, though, such as in these bids about which you have just been testifying, do we correctly understand you to testify that you do not want to be competitive and get the business there?

A. Well, you see, there are a great many elements. I wouldn't want my customers throughout the United States who are buying my goods to see these public tabulations of my prices below my card; and that might make a reason why I wouldn't care to have that business.

Q. Well, I think you gave that reason to Mr. Houston on direct. Now, I would like for you to answer my question as to this other reason.

Mr. MacIntyre: Will you please read the question?

Trial Examiner Norwood: Read it.

(Question read by the Reporter.)

A. Yes.

By Mr. MacIntyre:

Q. Now, in your references to Commission's Exhibits 603 and 604, about which Mr. Houston asked you, you testified about Mr. Drury, about Mr. Eiseman. You have known that those two gentlemen held official positions in the National Electrical Wholesalers Association as

2829 members of its conduit committee, haven't you, Mr. Bennett?

A. I remember it seems to me that Drury was on that committee once, but I don't remember Eiseman ever being on the committee. I have never talked with him or discussed—

Q. Your recollection now does not serve you well enough to permit you to testify whether Mr. Eiseman was on the committee or not?

A. I don't think he ever was, no.

Q. You did know Mr. Drury to be on it?

A. No, I haven't said that. I said it seems to me I have a recollection of his being on the committee at some time or other. I never knew him as being a member of the committee.

Q. Is it your testimony now that you never discussed the committee matters with him?

A. Positively.

Q. That you never discussed them?

A. I never discussed them. It is principle. A matter of principle with me.

Q. I am not talking about the principles now, Mr. Bennett. I am talking about whether you ever discussed with Mr. Drury—

A. I never discussed with Mr. Drury any question of policy, jobber policy, at any time.

Q. I will have to ask the question again now, Mr. Bennett. I am asking you whether or not you ever discussed with Mr. Drury, and whether or not it is now your
2830 testimony that you never discussed with Mr. Drury, any matter which had been handled by or discussed in meetings of the conduit committee of the National Electrical Wholesalers Association?

A. That is right.

Q. That is your testimony now?

A. I never did.

Q. What about the other members of the committee? Is it your testimony—

A. Who are they? I don't know.

Q. Mr. Fife. Do you know him?

A. Yes. I never met him, I don't believe. I know of him.

Q. Mr. Blue?

A. Blue, I think I used to sell him in Kansas City about 25 years ago.

Q. Don't know anything about him in the last quarter of a century?

A. Haven't met him for 15 years.
Q. What about Mr. Kiefer?
A. I don't know who he is.
Q. You don't sell any conduit out his way?
A. Where is he from?
Q. Mr. Fife is in Peoria; isn't he?
A. Fife is in Detroit.
Q. Yes; in Detroit. Who are your distributor agents in Peoria, Illinois?
2831 A. We haven't any.
Q. Don't sell there? Do you sell to Mr. Latham in New York?
A. We used to sell him. We don't sell him, never sold him in many years.
Q. Not since the Rigid Steel Conduit Association was organized?
A. I think we sold him a small lot about five years ago.
Q. Do you recall any conversations you have had with Mr. Latham?
A. Never had any.
Q. Never had any with Mr. Latham?
A. Not on conduit, no.
Q. Did you ever have any correspondence or discussions with Mr. Byers, to your recollection?
A. I think Mr. Byers is in the Wholesalers Association as an attorney or something of that sort; is he?
Q. I believe secretary.
A. I don't know him.
Q. Never—
A. I don't think I ever met him.
Q. Never wrote him or received any communication from him?
A. Well, now, if I did they were circular forms or something of that sort, some notices or something of that sort.
Q. What about Mr. Tolles?
A. Don Tolles, I have met him.
Q. Ever discuss any association matters with him?
2832 A. No.
Q. What did you talk about with Mr. Tolles?
A. "How do you do?" "How is the weather?" "Did you golf today?"
Q. Just let it go at that?
A. Positively never had a conversation with Donald Tolles relative to conduit.

Q. With reference to any matter of your association?
A. Of our association.
Q. Or of his association?
A. That is right.
Q. Or of any matter in either of the associations?
A. Or of any matter in either of the associations.
Q. How much do you know about the National Electrical Wholesalers Association, Mr. Bennett?
A. Well, I was invited to take lunch one day with two other gentlemen back in the dim ages, and that was the beginning of the association.
Q. The dim ages. How long ago was that?
A. It seems to me that was way back in about 1898.
Q. And somebody told you back then that there was going to be an organization of this—
A. Oh, my, no. The president of the company said, "Come on, Bennett. Let us go to lunch. I want you to take lunch." I said, "Who is going to be there?" I 2833 had a good reason for asking that.
"Why", he said, "Charley Brown of Central Electric Company of Chicago;" so the three of us had lunch, and the two of them discussed the question of possibility of forming an association of jobbers.
Q. And you never heard any further discussion about whether they formed that association?
A. Oh, yes; attended all of their meetings while I was general sales manager of the Electric Appliance Company.
Q. And what association was that?
A. Well, I think it was the—called the Electrical Wholesalers Association.
Q. And when did you attend the last meeting?
A. In 1904.
Q. Haven't attended any meetings of any jobbers associations since then?
A. Oh, yes. I go to the conventions.
Q. What associations conventions do you attend?
A. National Electrical Wholesalers conventions now and then, not regularly.
Q. How frequently?
A. Oh, I think I hit one about every four meetings.
Q. That is one every two years?
A. Something like that.
Q. And do you see any of the members?

2834 A. Oh, yes. That is the reason I go there. It is an opportune time for me to meet a great many of our customers.

Q. And during the course of those meetings you talked to members such as Mr. Eiseman?

A. Oh, yes.

Q. And Mr. Drury?

A. Yes, once in a while.

Q. And Mr. Latham?

A. Well, less frequently. I think I have talked to Latham once or twice at meetings.

Q. And Mr. Fife?

A. I don't know as I have ever talked to Fife. I wouldn't know the man if he walked in there.

Q. Mr. Blue, you have seen him at these meetings?

A. I wouldn't know him because I haven't seen him for about 15 or 18 years.

Q. Mr. Kiefer?

A. Never met Kiefer. I don't know what he would look like.

Trial Examiner Norwood: Recess until ten o'clock tomorrow morning.

(Whereupon at 4:05 p. m., December 10, 1941, the hearing was adjourned.)

2837 PROCEEDINGS.

Trial Examiner Norwood: Hearing come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C., 10 o'clock a. m., the 11th day of December, 1941.

Please note the appearances.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Proceed with the cross-examination.

I. A. BENNETT thereupon resumed the stand and testified further as follows:

Cross-Examination by Mr. MacIntyre (Continued).

Q. Mr. Bennett, assume that you and representatives of the competitors of your company employed common agents for the purpose of directing your collective activities, and that pursuant to that employment and at your request, or request of you and the others who employed such common agents, that they prepared a statement concerning the nature of the course of action that it was felt that—this collective course of action that it was felt that you and the representatives of the competitors of your company
2838 should follow; that recommendations of such common agents concerning such course of action were discussed by you and representatives of the competitors of the National Electric Products Corporation at a meeting; that before the meeting concluded it was announced that at least a substantial number of all of the companies represented at the meeting would follow the procedure recommended by such common agent, and straightway you and a number of your competitors did so follow those recommendations.

To your mind, does that set of circumstances or evidence of such circumstances constitute evidence of an agreement or meeting of the minds?

A. Why, I think it should, if it is possible, yes. I can conjure your part—I can see your part of the picture you have painted, but I don't think it would be possible.

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Q. Well, I am stating, though, the circumstances to you and asking you whether or not that they present to you evidence sufficient for you to conclude that such circumstances amount to an agreement.

A. Well, in my answer I am answering to you on the basis of your question in which you state "supposing." Now, you are building a picture of something that I never heard of. I doubt very much, knowing the conditions of trade, that such a thing could exist.

Q. I am asking you though—

Trial Examiner Norwood: When you testified that
2839 you did not make any agreements or have any understandings with competitors about prices or methods, did you mean to deny the existence of these conditions which Mr. MacIntyre has stated to you?

The Witness: I would deny them, yes, sir.

Trial Examiner Norwood: In other words, they wouldn't enter into your concept of the—they would not enter into your concept of agreements and understandings? Would they or would they not?

The Witness: They would not.

By Mr. MacIntyre:

Q. Is it, then, correct to say, Mr. Bennett, that you did not take into account any such circumstances when you answered Mr. Houston to the effect that you knew of no agreement, understanding, or a meeting of the minds between you and your competitors, between and among you?

A. Yes, that is right.

Q. That you didn't take into account any such set of circumstances?

A. That's right; I didn't take any suppositions into account.

Q. Have you ever seen any of the records in the form of minutes of meetings of the Rigid Steel Conduit Association which you found to be in error? They were correct, so far as you read them?

2840 A. I generally left that to a secretary to read and never had time to go through that a second time.

Q. There have been no errors called to your attention in those minutes of meetings?

A. It seems to me I have a dim recollection of years ago where, after the meetings had been—the minutes had been issued, that there were to be corrections in wording by an attorney, and the minutes would then be corrected.

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Q. Have you been in a position to review the minutes of the meetings of Rigid Steel Conduit Association at the time—during the period of time that the Organization Service Corporation and Mr. Blake were directing its affairs?

A. You mean from time to time as time went on?

Q. Yes.

A. I will tell you frankly, those copies used to come to me, and I generally turned them over to the secretary to read, check. I very seldom read them through myself.

Q. Mr. Bennett, I show you Commission's Exhibit 11-A to L. Will you please examine those records of the minutes of the Rigid Steel Conduit Association and point out to us any errors that you recognize in that report of that meeting as to what took place there?

A. Well, paragraph 1 of page 2 marked "C"—11-C; is that right?

Q. Right.

2841 A. 11-C says: "This form will be sent to all members and is to be used in reporting sales of rigid steel conduit commencing with the month of November, 1936, and continuing each month thereafter. A supply of these forms together with a letter of instruction was forwarded from the central office."

Well, taking that paragraph alone, anyone not thoroughly familiar with the situation would believe that the industry was reporting each sale to somebody, and it is an error. It should cover the question of reporting the total sales in blank for each month by each member. We were interested in obtaining the total tonnages per month.

Q. In other words, it is your testimony now that the statement appearing at the top of page—Commission's Exhibit 11-C is to the effect that the form that is referred to on the previous page was not used and the reports were not made on that form to the association concerning tonnages?

A. I don't know what the form was.

Q. How can you take exception to the statement appearing at the top of page 11-C unless you know what form is being referred to there?

A. I am taking the statement as it is shown in this paragraph which says, "sales of rigid steel conduit commencing with the month of November, 1936," and I say that anyone not familiar in reading this might think it was a question of reporting individual sales to somebody.

2842 Q. Oh. Your testimony is now that the statement is not incorrect, but it is possible for someone to probably misinterpret it; is that correct?

A. That is my original testimony, yes. In the next paragraph it says here, "Mr. Booth was unable to make a complete report on the status of the investigations made on specific building jobs but stated that approximately 350 additional contracts had been reported since December 29th, and that he would issue a complete report covering this situation within a few days." To a layman that would mean that he was going—

Q. Well, now, just a moment. You are not answering my question, now, Mr. Bennett. I am asking you whether or not that that correctly reports what took place there, not what a layman would interpret it to be as reported, but whether or not that it correctly reports what took place. Is that what Mr. Booth reported?

A. No.

Q. What did he report in that respect if he did not report that?

A. I don't remember. This is 1937.

Q. Well, let us pass on to something else if you do not remember what he reported on that instance—matter.

A. Paragraph 4 reads: "Employing such agency as in its opinion might be necessary to make an efficient and prompt investigation, with the understanding that
2843 such expense as might be incurred in connection therewith would be for the account of individual—the individual manufacturers whose contracts are investigated, and that the Organization Service Corporation is assured that the expense of such investigation services as it might consider it necessary to be set up would within reason be guaranteed by the Rigid Conduit Association."

That is in error. Rigid Conduit Association never guaranteed anything.

Q. Never guaranteed the expenses of the Organization Service Corporation—

A. No, sir.

Q. —in the investigation of contracts?

A. Right.

Q. How were the expenses to be taken care of?

A. Paid individually by the manufacturers, and the services of the Organization Service Corporation on investigating contracts would be on a pro rata basis and a separate contract with each individual manufacturer.

Q. And who guaranteed that they would so be taken care of?

A. No one. There wasn't any guarantee.

Q. In other words, the Organization Service Corporation undertook this matter without any guarantee that they would ever be paid for it; is that correct?

A. No, that isn't correct. They undertook it with a contract with each individual manufacturer.

2844 Q. Well, was there any guarantee in connection with that contract that the expenses would be covered?

A. Yes. The National Company guaranteed to the Organization Service Corporation that we would pay for the investigation of each contract we submitted to them.

Q. And you guaranteed the expense in connection therewith?

A. That is right.

Q. And did the other members do the same?

A. I don't know. I think they did. I don't know.

Q. So there was a guarantee, then, to the Organization Service Corporation of the—

A. By my company.

Q. —by the members of the Rigid Steel Conduit Association?

A. No. No. I didn't say that. I didn't say that. I am not capable of testifying to that.

Q. Well, now, you are telling us that you do not know, then, whether or not the Organization Service Corporation had guaranteed to it in anywise, except by your company, that its expenses of investigating specific job building contracts would be covered?

Trial Examiner Norwood: Now, wait a minute. Wait a minute.

Mr. Bozeman: If Your Honor please, I wonder if the witness has completed his examination of those minutes. I notice Mr. MacIntyre took them out of his possession.

2845 Trial Examiner Norwood: I think we can get along without that.

Mr. MacIntyre: I am going to ask some further questions on this, Mr. Bozeman.

Mr. Bozeman: You asked him originally whether or not there is any error in the minutes. I am not sure whether—

Trial Examiner Norwood: I will leave that to the counsel, whether or not he gives it to the witness. Answer the question.

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A. My testimony was that there was no guarantee by the Association. My further testimony was that the National Company guaranteed to pay its bills through the Organization Service Corporation for every contract we offered it for investigation.

Q. I am asking you now, though, whether you know or whether or not it is now your testimony that you do not know of any guarantee other than given by your company?

A. Right. Positive.

Q. In other words, so far as you know, then, no one other than your company guaranteed to the Organization Service Corporation that its expenses in investigating specific building contracts for the Rigid Steel Conduit manufacturers—would have its expenses covered?

A. That is my recollection, yes.

Trial Examiner Norwood: Did you know others 2846 were taking this reporting service?

The Witness: Orally, yes.

Trial Examiner Norwood: What?

The Witness: Orally, yes. I knew about it, yes.

By Mr. MacIntyre:

Q. You do know that Mr. Booth as an employee of the Organization Service Corporation did from time to time report to you and the other members of the results of investigations which had been made by the Organization Service Corporation or by others under its direction, of the building contracts, that is, specific building contracts? Is that correct?

A. I don't think so.

Q. You don't know of any reports he made—

A. I don't think so.

Q. —from time to time?

A. He reported about—on our stuff regularly. If he didn't we checked him up.

Q. I show you Commission's Exhibit 20-B, the minutes of the meeting of the Rigid Steel Conduit Association of July 13, 1937, and ask you to look at that and see if you can tell us whether or not that you were present at that meeting?

Mr. Robison: Mr. Examiner, I think that question that was raised by Mr. Bozeman should be further prosecuted at this time. This witness was asked whether in the minutes of the meeting which was indicated as Exhibit 11

2847 and various letters there were any errors. He has been allowed to examine those minutes to a place somewhere in the middle of the third page out of 12. If the witness is not going to be permitted to complete his answer, then I think the record should show that the question of Commission's counsel, insofar as it has not been answered by the witness and the witness has not been given the opportunity to answer it, is considered to be withdrawn.

Mr. MacIntyre: I think it can be so considered, because the witness as to one paragraph on that page said he had no memory as to whether or not it was correct. Consequently, I do not feel that it would gain us anything to go on through probably a half an hour's examination of that paper if he has no direct memory or knowledge, so I am following your suggestion and not bothering further with this question about those circumstances.

Mr. Bozeman: He did have memory about the guarantee, though.

Mr. Austin: Are you making that statement for the record? Are you withdrawing the rest of that question?

Mr. MacIntyre: It is on the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back to the record.

By Mr. MacIntyre:

2848 Q. Now, as to this question concerning Commission's Exhibit 20-B, what is your answer, Mr. Bennett?

A. The record is that I attended the meeting.

Q. Now, I call your attention to Commission's Exhibit 20-H, which is a portion of those minutes. Is it your testimony that Mr. Booth did not make reports from time to time to members of the Rigid Steel Conduit Association in attendance at its meetings of the nature that is shown on Commission's Exhibit 20-H, concerning the investigation of specific job contracts and the results of those investigations?

Q. Mr. Examiner, the previous questions relative to a large part of the minutes involved me, unfortunately, in my endeavor to answer paragraph by paragraph and then not being permitted to know what were in the minutes as a whole dated 1937, years ago. My memory is good, but to

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answer this question here and giving due consideration to the things that may complicate my answer, I would prefer to read this all through and make a study of it.

Trial Examiner Norwood: All right. Go ahead.

Mr. MacIntyre: I object to the witness reading the record for the purpose of determining whether or not that he has given me a correct answer.

Trial Examiner Norwood: No. No. Read the exhibit there that was given you and none other.

Mr. MacIntyre: Yes.

2849 Trial Examiner Norwood: He is asking you a question about that one exhibit.

Mr. MacIntyre: Let us go back to the question that is pending now.

Trial Examiner Norwood: You can either answer it or say that you can't answer it.

Mr. Stewart: Mr. Examiner, may I suggest—and I don't think Mr. MacIntyre wants to be unfair to Mr. Bennett. I think the whole trouble here is due to the fact that Mr. Bennett is talking about one kind of reports when Mr. MacIntyre is talking about another. Mr. Bennett is talking about reports made back to his company. He said Mr. Booth didn't make those. Mr. MacIntyre is talking about a monthly report that was made to the Association. If you will differentiate—

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: Read the question. It is perfectly clear.

Mr. Stewart: Read the previous question.

Mr. MacIntyre: Let us read the pending question.

Mr. Stewart: Mr. Examiner, the apparent contradiction, you see, will lie in Mr. Bennett's previous answer when he is talking about reports. Now, you have to know which reports he is talking about, the ones back to the company or some general reports Mr. Booth made.

Trial Examiner Norwood: We will straighten out
2850 the other question if it appears that it should be, but let us answer this question now.

Read the question.

(Previous question read by the Reporter.)

A. Yes.

By Mr. MacIntyre:

Q. It is your testimony that he did not make such reports?

A. Yes.

Q. How do you account, then, Mr. Bennett, for the minutes of the meetings of the Rigid Steel Conduit Association to the effect that he did make such reports monthly?

A. I have no such recollection that they did.

Q. Is it your testimony now that he did not make them or that you do not recall that he made them?

A. I don't think he did.

Q. I am asking you now whether or not that it is your testimony that—positive testimony that he did not make such reports?

A. No, it is not my positive testimony.

Q. Well, what is your testimony on it?

A. That I don't think he did.

Q. Well, what is the basis of your thinking on it?

A. My recollections.

Q. In other words, your testimony, then, is to the effect that you have no recollection of him having made such
2851 reports; is that correct?

A. I have some recollection.

Q. Well, what is the recollection that you do have?

A. My recollection is that he made reports on the work as it advanced. I wouldn't say that it was done monthly or bi-monthly, or tri-monthly. I remember seeing some reports on the subject of cleaning up old contracts.

Q. Well, now, what was the nature of those reports?

A. The nature of the reports were the number of duplications there were, number of tons, of excess tonnage, that were fraudulent, and number of contracts found fraudulent, number of contracts regarded as good. These were bulk reports not covering individual companies. The result of their activities for each company consolidated into one report.

Q. He also reported to you how many had been cancelled; didn't he?

A. Oh, yes, I think he did, yes.

Q. And those reports were periodic?

A. Yes, irregular.

Q. And were made to you and representatives of the competitors of the National Electric Products Corporation during the course of meetings of the Rigid Steel Conduit Association?

A. I am quite sure it was made at regular meetings of the Association.

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Q. Can you recall what other items that he re-
2852 ported to you in that connection during the course of these meetings?

A. Not offhand. I don't know as I can, no.

Q. In other words, you can't recall in detail what he did report, other than what you have just told us?

A. The minutes you have shown me are 6 or 7 years old, aren't they? Three or four, five years old; a long while ago. I don't remember without refreshing—

Q. In other words, you cannot recall the other details that he reported other than those that you have just told us about?

A. I wouldn't recall these unless you had refreshed my memory by showing me the reports.

Q. But the Commission's Exhibit 20-H, that report did refresh your memory on some of these things?

A. Yes. Yes.

Q. During the course of your direct examination you told Mr. Houston that your customers do not resell conduit. Do you recall that testimony?

A. Yes. Our distributor agents do not resell. They sell it for us.

Q. And it is your thought that whenever they buy from consigned stocks which they are carrying of yours for their own account and job that out in sales to contractors and to others who use conduit for particular prices to their own liking, whether it is the same price that you have quoted them to sell conduit, that they are not reselling?

2853 A. No. That is resale then.

Q. What?

A. That is resale then. See, we consign our conduit to our distributors. No sale takes place until they sell it. Now, where they would buy against the terms of the contract for their own use to stack it up in stock or something of that sort and then later made a sale to a consumer, then, that would be resale.

Q. You do not now testify that that has never occurred, or does not regularly occur?

A. No, I wouldn't testify that it regularly occurs.

Q. But you know that it occasionally occurs?

A. It has occurred, oh, yes.

Q. And over the years it is occurring?

A. Yes—25.

Q. Now, as to conduit which is purchased by these

jobbers from consigned stocks which you are carrying in their places of business and which they resell, what price do you charge them for it?

A. Their method of buying it isn't known to us, that is, we don't know what they buy. There is no record made. They simply take it out of their consigned stock as if it had been sold at that time to somebody else, transferred over on this side, and call it their own and make a report on their consigned stock report when due as sold from
2854 consigned stocks. We do not know about the transaction.

Q. You treat that as a sale from your consigned stock—that is, as any sale from your consigned stock?

A. Yes. We don't know any different.

Q. You are not interested in the names of the people to whom they sell your conduit out of your consigned stock?

A. I wouldn't say that. We are very much; very much interested.

Q. In other words, it is—well, you do not require them to report to you whether a sale from your consigned stock is made to electrical contractor A or electrical contractor B?

A. No.

Q. Or whether that as to a particular lot they bought it for their own account?

A. We obligate them not to buy it for their own account in our contract.

Q. That is, your present contract with them?

A. Ever since we first formed. The first contract ever made read that way. It has always been.

Q. Do you know that they do buy for their account?

A. Yes, on occasions where they have done so, at our regret.

Q. You have taken no steps to prevent that?

A. Yes. I have cancelled contracts because of that.

Q. You do not cancel contracts with all of them that you do know that do do that?

2855 A. That would be hard for me to tell you that. I wouldn't exactly know that over a period of 25 or 30 years.

Q. Is it your testimony that you did cancel all contracts, or attempted to cancel all contracts, with jobbers whom you knew have done that?

A. That is the intent of the contract with them.

Mr. MacIntyre: That isn't the answer to my question. Please read the question.

(Question read by the Reporter.)

A. It is all depending, Mr. MacIntyre, upon what you mean by "knew." Knowing is proving as in that case. On a legal contract I would have to be sure of my grounds, and that is very hard to get on a situation of that kind, difficult.

Q. You haven't acted on all the information that came to you in that respect; have you?

A. Oh, yes, I have.

Q. Well, now, tell us about that.

A. I promptly asked for a report of our agent in the field.

Q. That is, in each instance where information came to you that a jobber had bought from your consigned stock for his own account?

A. In all instances; they—each and every one of them.

Q. It is your testimony now that you never failed to do that?

A. That is my testimony. That is a procedure of 2856 our organization, like the clock.

Q. Then what did you do after that?

A. We either cancelled or dropped the case.

Q. Well, what percentage of the cases did you drop?

A. 99.

Q. 99 percent of them you dropped?

A. Yes.

Q. Didn't do anything further with it?

A. That is right.

Q. And why did you do that in the 99 percent of the cases?

A. Insufficient—insufficient evidence.

Q. In other words, the information came to you and you considered it insufficient, and you just dropped it?

A. Just like I reported to the Federal Trade Commission one time. They sent me back blanks, insufficient evidence; can't take any action.

(Laughter.)

Q. You didn't attempt to follow up where the conduit was used and from whom the user bought it?

A. Oh, yes, I did.

Q. And what did you find out?

A. A lot of things.

Q. You didn't get any information that the jobber sold it?

A. Not sufficient evidence.

Q. Well, did it lead you to believe that he had sold it?

2857 A. Yes. I formed some very fervent dislikes of this fellow or that fellow because of it, but that didn't help.

Q. On the basis of the information?

A. Yes.

Q. And you continued to do business with these people that you disliked?

A. Sometimes.

Q. The business is good enough for you but they are not, is that correct, in the way that they do their business?

Mr. Stewart: I submit, now, that that is unfair.

Trial Examiner Norwood: Objection sustained.

Mr. MacIntyre: I will withdraw the question.

By Mr. MacIntyre:

Q. Mr. Bennett, calling your attention to Respondents' Exhibit 121 and also to Respondents' Exhibit 120-A to G, inclusive, I would like to ask you whether or not that the total amount in terms of dollars and cents of your volume of sales upon which those percentages are based, as expressed in those two exhibits, is a volume equivalent to your return at the mill, net return at the mill?

A. Oh, yes. Yes. Yes.

Q. In other words, the number of millions of dollars that is involved in the hundred percent of the figures shown there would be your mill net for that year's sales, that is, on that year's sales; is that correct?

2858 A. I asked our statistician for the records of his ledgers, and this is what I got. I got them in dollars and cents in towns and states, and I didn't like the dollars and cents to circulate around, so I asked a statistician here in Washington to get these figures up for me reducing the dollars and cents to percentages. That is the best I could do.

Trial Examiner Norwood: Does that percentage represent nets?

The Witness: I imagine so. That is the ledger—ledger story. That is what our customers expect to pay us.

By Mr. MacIntyre:

Q. That is your mill net return, Pittsburgh?

A. Yes.

Q. Do you see any other way in which you could have presented the showing that you have in Respondents' Exhibits 120 and 121 except by taking your mill net returns, as you have told us that you did?

The Witness: I don't understand your question. Please read it.

Trial Examiner Norwood: Read the question.

(Question read by the Reporter.)

A. I haven't thought of any.

Q. You what?

A. I haven't thought of any other way.

Q. It is on the basis of such total of mill nets
2859 that you determine whether or not that at the end of the year you have made a profit or sustained a loss?

A. No. No.

Q. How do you determine whether you have made a profit or sustained a loss at the end of the year?

A. By adding up our monthly profits and taking our grand total. We find out every month how much we have made.

Trial Examiner Norwood: Is the profit sheet based on nets?

The Witness: The profit sheet is based on what it costs us to produce the goods with the usual overhead and burden deductions and other deductions, which is deducted from the sale price of the goods, and the net is our profit.

By Mr. MacIntyre:

Q. You don't take the Pittsburgh base price as a basis for figuring whether or not that you made a profit or sustained a loss, do you, in all instances?

A. We don't ever use what we term "Pittsburgh base" in any of our transactions.

Q. You use it, however, in your price cards?

A. That is a matter of form, yes.

Q. Yes. But when you come down to the transaction itself, the price that is figured from the Pittsburgh base plus freight to the destination isn't necessarily a picture of what you get in the form of a mill net return; is it?

2860 A. We figure up the price of the conduit according to the price sheet and then prepay the freight,

which was deducted by reason of our method of figuring the freight book, and the result is the same, and that is the story.

Q. But my question is to this effect: That by taking the Pittsburgh base plus the freight factors that you use in calculating your delivered price for a particular destination in and of themselves show what your mill net on your shipment is going to be; does it?

A. We have always so regarded it. I think maybe you have given me a new line of thought. In other words, what you are driving at is that we may lose or make by reason of our method of pricing; is that it?

Q. Well, that is included in the thought, yes.

A. Well, let us go ahead. Let us find out. Maybe I am learning something.

Mr. MacIntyre: Will you please read the question again?

Trial Examiner Norwood: Read the question.

(Question read by the Reporter.)

Trial Examiner Norwood: Is that the fact or not?

A. We so regard it, yes, in our ordinary transactions.

By Mr. MacIntyre:

Q. In other words, you regard that the combination of the Pittsburgh base plus the freight shown in your
2861 freight rate compilation is a showing of your mill nets?

A. Yes.

Q. Now, what about your sales to a customer in the Chicago territory? What do you give your customer in such territory that would indicate what your mill nets are on your sales to him?

A. We use a competitive Chicago base on shipments in Chicago.

Mr. MacIntyre: Please read the question to the witness again.

(Question read by the Reporter.)

A. What do we give our customers?

Q. Yes.

A. A price sheet with a freight book.

Q. When you invoice him your goods what do you give him that would indicate to him what your mill net is on the shipment that you made to him?

A. Our price book, freight book, and price list. That is the rate we would bill to him.

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Q. In other words, the only thing that he has from which he could figure what your mill nets are on those shipments are your price cards plus your freight rate compilations; is that correct?

A. Plus the extra discount we might be giving him at the time. The basis of all of our quotations to our customers is our price lists.

2862 Q. But he has no other information that would show on the invoice or shipping papers what your mill net is?

A. Oh, my, no.

Q. On a specific shipment?

A. I don't think so, no.

Q. Well, that is true of your shipments to customers located in the Pittsburgh territory also; isn't it?

A. I—I would like to refresh my mind on that and bring you a lot of invoices. Maybe we have some. I think you went through our records here in the last two or three weeks and collected some of our invoices. Let me bring them forward and look at them and see what they mean. This mill net you keep repeating is a new term for me. I never used it.

Q. I am asking you now what you know about what you do in advising your customers what your mill net returns are on your shipments.

A. We don't use the term "mill net."

Q. You know what it is, don't you?

A. Well, I—I presume that it means the price of our goods after freight and discounts—cash discounts are taken off.

Q. That is correct.

A. Yes.

Q. Now, I am asking you, with that understanding of what it means, what do you do to advise your cus-
2863 tomers, that is, in your Pittsburgh territory, what your mill nets are on the shipments you make to them?

A. We send them our price lists and quotations and freight books.

Q. And you depend upon those to advise the customers?

A. If they want a net price and ask us for it we give it to them.

By Mr. MacIntyre:

Q. When you told Mr. Houston on direct examination that the percent of the total cost of a building represented by an electrical conduit—no; by electrical installation was three percent, you included there as a part of the cost to the building the labor, such as bricklayers and hod-carriers, and everything else; didn't you?

A. Oh, my, no.

Q. Total cost of the building?

A. Oh, yes. I beg your pardon.

Q. Total cost of the building?

A. Yes. That is, the total cost of the building.

Q. And when you spoke of the cost of conduit, that is, the percent of the total cost of the electrical installation being represented by the cost of conduit, you said
2864 one-half of the three per cent; didn't you?

A. One-half of one percent of the three percent.

Q. Of the installation?

A. Yes. Half of one percent of the cost of the electrical installation.

Q. Of course, the balance of the electrical installation was labor we are talking about and other materials?

A. Wire and sockets and tape and switchboards and labor, yes.

Q. All right. Now, can you tell us what part of the electrical installation, that is, the cost of the electrical installation representing the cost of materials is represented by the cost of conduit?

A. I would hardly be a competent witness on that.

Q. In other words, you don't know?

A. Well, I have never been in the construction business. I don't get into those details. The testimony I have given has been based on our statistical department, which keeps track of the amount of general building and the number of electrical contracts and about conduit sold, and that gives you a fairly good measuring stick.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

By Mr. MacIntyre:

Q. Now, these percentages which you have given
2865 us are based on an overall average; is that correct?

A. Overall estimate, in my mind, you might say. You understand now—

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Q. It is your estimate of an overall average, then, for the entire country on everything?

A. As much of the country as comes under my observation.

Q. Of course, there are variationes in those percentages in particular types of construction?

A. Oh, yes, greatly.

Q. For example, the ratio of the cost of electrical installations, and particularly of conduit, as used would be much higher to the total cost of the building in one of these temporary war buildings that are going up here on the Mall than it would be on some monumental building such as the Mellon Art Gallery; is that correct?

A. It depends upon the type of construction. A temporary building such as these out here may not use a stick of conduit. They may go to a temporary wiring system.

Q. But when conduit is used in the electrical installation in that type of building, the ratio of its cost to the total cost of the building is much higher in percentage than this average which you have given us?

A. I would think so. Yes. Yes.

Q. And you do know that the government in many of its temporary barracks is using black enameled conduit?

2866 A. No. No, I don't.

Q. You don't know?

A. I don't think they are.

Q. Are you attempting to say now, Mr. Bennett, that you just don't know?

A. I am attempting to say to your question that they are not using it.

Q. What is the basis of your statement that they are not using it?

A. My sales experience in selling another line on their barracks.

Q. Do you have any information as to whether or not they are using it in these temporary buildings that the government is putting up?

A. In the last two or three weeks here I don't know what they are using, but prior to that I have got a very definite recollection.

Q. And that recollection is to the effect that they were not using it in the barracks of the cantonments?

A. No. They used millions of feet of armored cable almost exclusively. I doubt that they used 1/100th of one percent rigid conduit.

Q. And can you tell us why that armored cable was used there instead of conduit?

A. Yes.

2867 Q. Why?

A. It represents a much lower cost, first cost, and a much lower cost of installation.

Q. But the first cost, to your mind, as you see it, is an element in the decision as to whether or not it would be installed?

A. Yes.

Q. Your testimony is to the effect that when you did your contract checking direct and you caught someone misstating, that is, a contractor misstating the needs of the job, that you lost the contractor, and when you caught—

A. Yes.

Q. And when you were doing the job direct and you caught a jobber misstating it you lost the jobber?

A. We lost favor with the jobber, very considerably.

Q. Now, you found that when you did the checking through the Organization Service Corporation and those employed by it what happened?

A. We were relieved of that, except in the respect that I was chairman of that Association during the period of its organization, and I was the target for the whole darned thing, and that is one reason why I tried to resign and one —and was the reason why I insisted that Mr. Blake be made president, because he was not connected in the merchandising end of the business.

2868 Q. In other words, it was your desire to have these contracts checked?

A. Wholly.

Q. But in such a manner that the customer whose contracts were being checked would not know who was having the contract checked?

A. That is right.

Q. Is that correct?

A. That is right.

Q. That was one of the reasons that you had the Organization Service Corporation to handle it?

A. That is right.

Q. You found that to ask the jobber questions about it directly was undesirable from your point of view?

A. A proper answer to that is this: That we deal through our salesmen agents. We—they are important in

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their district. They are the ones that have to do the checking against their customers. That was bad. We tried to—

(Discussion off the record.)

Mr. MarIntyre: Will you please read the question?

(Question read by the Reporter.)

By Mr. MacIntyre:

Q. Is that correct?

A. Yes.

Q. So for that reason you employed someone else to ask him?

2869 A. Yes.

Q. You have told us something about an instance of diverting a shipment up in Boston. Please tell us more about that.

A. You are making it necessary to name the parties; are you?

Q. Yes. I would like to have the parties named—

A. All right.

Q. —as well as the time fixed on that.

A. Dates are a bad thing for me. I can't remember the dates but the—the account—the record is on our books very clearly. The jobber in question was Wetmore Savage Electric Company, Boston, Massachusetts. I have forgotten the name of the electrical contractor and the name of the job. The details—the details of the matter were the result of instructions issued by me to check all shipments on contracts to see that they reached the proper destination.

Q. Well, tell us what happened on this diversion of this particular shipment?

A. In this case they came to me and told me that the railroad company had been instructed by Wetmore Savage Company to have the bill of lading to continue on the shipment to a point in Maine, another consignor—consignee. We could not stop it, inasmuch as we had sent the bill of lading with the bill to Wetmore Savage, but we continued the tracer and traced through to the de-

livery of the material, and then rendered an addi-

2870 tional bill to Wetmore Savage for the difference between the existing price and the price at which the contract had been signed many months before, and it stood on our books for many months. Our salesmen in Boston endeavored to have the charge taken off the books. Our vice-president-treasurer H. H. Robinson, objected to

having the account on the books that couldn't be collected. I discussed the subject with Val Wetmore of the Wetmore Savage Company, explained to him the necessity of his paying the bill. They never paid it, and I think it was wiped off of our books within the past six months. The original transaction is probably—probably as long as four years ago.

Q. Now, the bills of lading called for delivery of the conduit to the Wetmore Company in Boston?

A. That is right.

Q. And what you were billing them for was the difference between what you would have received on that—or what you did receive from him pursuant to your obligation to deliver the—or have the goods delivered to him in Boston and what you would have received if you had sold him the goods for delivery to some point in Maine, that is, to the point in Maine to which he finally had the goods shipped himself; is that correct?

A. That is right.

2871 Q. Well, you did not receive from the Wetmore Company in that instance any less than you would have received if he had pursuant to his arrangement with you used the bills of lading, taken the goods from the railroad company in Boston to his own account, and then sold them to someone else in Boston and they used a truck to have hauled them to the point in Maine?

A. That is not only cheating on the contract; we couldn't have stopped it. We wouldn't have known of it. We wouldn't have known of that record, unless something happened. But—

Q. But you wouldn't have received any less—

A. Oh, no.

Q. —if he had done that than you did receive by him handling it in the manner in which he did handle it; is that correct?

A. That is right; correct. The merit in the thing is his profit. If he had stopped the shipment, unloaded it and trucked it to the point in Maine, the combination of charges wouldn't have given him the incentive to pull the trick.

Q. So the only difference, then, that you were after in that instance was the amount of the profit which he did get by virtue of doing what he did do over and above what you expected him to do under his contract with you; is that correct?

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A. No. No, that isn't correct.

Q. Why isn't it?

A. Well, under a lower price market, lower cost of
2872 raw material, maybe a lower labor cost, we had sold certain goods on a certain job that a certain contractor was going to put into a building. Th.. contract we entered as an obligation of the company. There were terms that had been in existence for years that we would protect that job for a period of six months. In that interval of time I don't know just exactly the conditions, haven't looked it up, but if the price went up there must have been a good sound reason for the price going up, an advance in labor or raw materials or costs of some kind. Now, the fact that Wetmore Savage asked us to make this shipment of conduit on which we purchased raw material and obligated ourselves to ship at a lower price, to ship at a—in place of a car of material of the higher priced, we would be cheated out of that difference in cost but without being released as to the fulfillment of the contract on that building. Now, it is hard to understand for me, much harder for you to understand, that in this is the element of amount of material required for a job. The contractor never tries to underestimate. It is natural for us to always over-protect ourselves, so we are constantly asked for more material, particularly if the costs advance. In the case of the Medical Center, the Navy out here at Bethesda the contractor asked for an, enormous quantity over and above, which was sold at a price that I wouldn't consider. In order
to get that they had to have a certification from the
2873 general contractor, from the Department of Bureaus & Supplies, by the inspector on the job, and by himself, before I would give him the material, and I finally gave him that extra material. Now, that is how carefully we run our business trying to keep from these broken—or fraudulent contracts.

Q. Now, Mr. Bennett, you are getting into a discourse on contracts. I am asking you now what the effect of the diversion element was on this instance in Boston about which you told us. Now, considering my question from that angle, what is your answer?

Mr. MacIntyre: Read the last question.

(Last question read by the Reporter.)

Mr. Gilpatric: Mr. Examiner, I submit he has answered this twice now. Mr. MacIntyre refuses to accept the answer.

Trial Examiner Norwood: I am not sure of that. Read the question.

Mr. MacIntyre: I attempted to give the witness full rein here.

Trial Examiner Norwood: Read the question.

(Question read by the Reporter.)

By Mr. MacIntyre:

Q. Answering that from the angle and element of the diversion, if you please.

Trial Examiner Norwood: The question now is "why isn't it?" Read that answer.

2874 Mr. MacIntyre: Why is it from the standpoint of the diversion?

Mr. Houston: May we have that answer read, sir, please?

Trial Examiner Norwood: He is going to read it.

(Last answer read by the Reporter.)

Mr. MacIntyre: I will just have to ask the question over because we are so far away from it—

(Discussion off the record.)

By Mr. MacIntyre:

Q. Now, Mr. Bennett, keeping in mind and limiting your answer to the question of the effect of the diversion in this instance, and that alone, please answer this question: Did you secure on this shipment to Wetmore Savage Company any less than you expected to receive on the shipment?

A. $264, I think it was.

Q. Was that any less than you expected to receive on the shipment?

A. Yes.

Q. What did you expect to receive on that shipment greater than that?

A. I expected to receive the existing price on that shipment.

Trial Examiner Norwood: Expected to receive the contract price; didn't you?

The Witness: No. No. I expected to receive the 2875 existing price because, after all, under cover—

Trial Examiner Norwood: Well, he is speaking about delivery to the place designated in the contract.

The Witness: Oh.

Trial Examiner Norwood: Did you get as much money as you would have gotten on this shipment to the place designated in the contract?

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The Witness: I did.
Trial Examiner Norwood: Thank you.

By Mr. MacIntyre:

Q. Now, you have told Mr. Houston that you do not attempt to enforce specific job contracts, as a general rule. Do you recall that?

A. I do not. I testified just to the opposite.

Q. Is it your testimony now that you do attempt to enforce specific job contracts?

A. Why, constantly, every day.

Q. Anything that you have said on direct should not be taken to modify this statement of yours, then?

A. I don't know what you mean by that. That is pretty general. I answered your question and I will answer others.

Q. You told Mr. Houston that you put out price cards on which you expected to lose money. Please give us the numbers of those and the dates of their issuance.

A. You are now talking from card 1 to card 84? 2876 If you are, I couldn't do it.

Q. Talking about any of them that you had in mind when you gave that answer to Mr. Houston.

A. I can speak of one in particular, but I—

Q. Which one was that?

A. I don't know the number of the card. I can give you the—

Q. About what period of time?

A. The time of the flood out there in Pittsburgh. Was that 19—March 17, 1936?

Q. You are talking about card 72 that was issued about March 17, 1936?

A. I think that is it.

Q. You expected to lose money on that?

A. I would like to look at the card if you have it there.

Q. I am showing you Commission's Exhibit 62-Y, your price card No. 72, issued March 18, 1936. Is that the card you were referring to?

A. I am taking the privilege of looking at the previous card.

Q. That is all right.

A. Is that all right? Yes, that is the card I referred to.

Q. So it is your testimony that you expected to lose money when you issued that card?

A. A lot of money.

2877 Q. Can you tell us of other cards that you have issued where you expected the same thing?

A. I don't think we expected to make any money on the next card that we issued, card—

Q. 73?

A. —73. I don't think we expected to make any money on that card.

Q. Well can you name any other cards that you issued on which you expected at the time you issued them to lose money?

A. This stands out as a rather startling instance. I don't remember. I could refresh my mind, though, over a period of years.

Q. No others stand out in your mind at this time?

A. We have had many periods where we have lost money manufacturing and selling conduit. To associate it with dates and numbers I am not able off hand to do it.

Mr. MacIntyre: Your Honor please, I move to strike the portion of the witness' answer in which he says he lost money. He is not answering the question I asked. I did not ask for any answer that goes to that point.

Mr. Taylor: If Your Honor please, I think Mr. MacIntyre is being a little technical this morning, almost to the extent where he is being unfair. The witness said in answer to a question almost identical that he couldn't remember, but he could possibly refresh his recollection,

2878 and he hasn't been given that privilege.

Trial Examiner Norwood: Read the question.

(Question and answer read by the Reporter.)

A. But to associate it with numbers of cards and dates I am not able to do it.

Trial Examiner Norwood: I think that answers it.

Mr. MacIntyre: My question goes to this answer that he gave Mr. Houston, to the effect that—

Trial Examiner Norwood: Yes. And you asked him if there are any other cards that he recalls were issued in the expectation of losing money.

Mr. MacIntyre: That is right.

Trial Examiner Norwood: And I think that that answer meets it. He may answer—do you recall any other cards?

The Witness: No, I do not. I don't identify them with—

Trial Examiner Norwood: Do you recall the fact that

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there were at other times other cards that were issued in that apprehension?

The Witness: Yes.

Trial Examiner Norwood: Could you tell us about what time they were issued?

The Witness: Well, that is my difficulty, Mr. Examiner. I can't connect dates and the card numbers. I haven't
2879 been so closely identified or have I made a study of it to come here and testify on that subject.

Mr. Robison: I would suggest, Mr. Examiner, that you ask the witness whether a reference to his cards, which are in evidence, would help him in that respect.

Trial Examiner Norwood: Well, I will leave that to counsel. I merely was trying to clarify and get a quicker answer to a pending question.

Mr. MacIntyre: Mr. Robison and Mr. Houston could have asked those questions when they were discussing this thing with the witness on direct if they had so desired.

Trial Examiner Norwood: Proceed.

Mr. Robison: I don't understand that it is my privilege at this stage of the examination to ask such a question, Mr. Examiner.

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. You told Mr. Houston when you issued your cards you put numbers on them and that if you didn't put the numbers on them you would probably put dates on them. Do you recall that statement?

A. Yes, that is right.

Q. The dates appear on them now?

A. Yes. But the point of identification, as I made in my testimony, was this: That there must be some
2880 identification to simplify the act. For instance, one jobber handling four different competing lines, what confusion there would be if the National Company's was 84 and somebody else 72 and somebody else 13 and somebody else 8-A or something of that sort. I think it is perfectly natural prior to—

Trial Examiner Norwood: Does that meet this question?

The Witness: Yes, I think so.

Trial Examiner Norwood: Go ahead.

The Witness: Shall I go ahead?

Mr. MacIntyre: I don't have any question pending. I asked him if he has the dates on them now, and he said "yes," and that answered that. There is no further question.

Trial Examiner Norwood: All right. Go ahead.

The Witness: I thought you were looking for information. I beg your pardon.

Mr. MacIntyre: I am, but I am after information—

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

By Mr. MacIntyre:

Q. Is it your belief and your understanding, from your contacts with these jobbers and wholesalers, that if they saw the date of March 18, 1936, on your card and the date of March 17, 1936, on the card of one of your competitors, that that would not sufficiently distinguish the times
2881 of the issuance of those cards for that jobber, in the absence of a number 72 appearing on your card and also appearing on your competitor's card?

A. In your discourse here I have lost track of the question.

Trial Examiner Norwood: Read the question.

(Question read by the Reporter.)

A. All right. I would say, in answer to that, that the—the month would probably be the identifying thought in most of their minds. A reduction or advance had taken place in conduit during the month of March.

Trial Examiner Norwood: You mean putting the month on the card would be sufficient to identify it with a particular price scale?

The Witness: Yes. Yes. Instead of hunting—quarrelling over some date.

Trial Examiner Norwood: Instead of the date or instead of a number?

The Witness: Yes. Say it was a March or an April or a February.

By Mr. MacIntyre:

Q. It is your understanding, then, that even if all manufacturers of rigid steel conduit during the month of March, 1936, and, for that matter, within a 10-day period of March, 1936, issued price cards, all of which carried

the dates of their issuance and all of which carried
2882 exactly the same price, that if a portion of them should have been issued with the number 70 on them, or, for that matter, number 80, starting a new series of numbers, and you had put your next number on yours, which happened to be 72 as of that time, that these jobbers would have been unable to tell what your prices and your competitors' were so as to match one against the other? Is that correct?

A. That is some question.

Trial Examiner Norwood: Read it.

(Question read by the Reporter.)

Mr. Stewart: Now, I object to the form of the question on the ground that it is complete without the language "matched against one another."

Trial Examiner Norwood: Objection sustained. Not especially on that ground, but the question is long and confusing. I am not just sure what it is directed to.

By Mr. MacIntyre:

Q. Well, Mr. Bennett, is it your testimony that if, when you issued your card 84 during January, 1941, if part of your competitors used that number and some of the others had started with the use of a new series, say 100, that your customers and their customers could not have determined what prices were current on the part of you and your competitors, even though the card showed the dates of their issuance and the prices which they carried?

2883 A. Mr. MacIntyre, you are talking about something that hasn't occurred and with which I have had no experience, and I don't know.

Q. Well, how, then, can you testify, as you did on direct, that to issue cards on the part of some manufacturers with one number and on the part of others with other numbers would create confusion?

A. Because prior to card No. 1 in the conduit industry we issued bulletins, and we were so addicted to the term "bulletin" that you will notice that our first card when we changed over, following the National Tube Company's instructions, that they had been using cards for years, but in our printing our first price list under their control we printed the first sheet as "bulletin No. 1," which had to be corrected, as is shown in evidence, "card No. 1." This bulletin system was preceded by that, by our term "sched-

ule" in 1905, 1906. It was "schedule" four or five or six, all through that period we had competitors that followed us. We followed the other fellow. You must understand that in that period there were two companies in existence, the American Circular Loom Company and the Safety Armorite Company, and we came into existence and followed them. The rest of these companies were not in existence, weren't thought of at that time. When card No. 1 was issued most of these companies weren't in existence, and as they came into existence they followed
2884 —I think the most successful manufacturer tried to take his trade away from him. It has been so ever since. In addition, we manufacture other products, and we have a system of numbering our price lists in armored cable, and I don't for the life of me, know why—and some day I will change it if I think of it at the right time—22-A-14-17 that means absolutely nothing to anybody, those numbers. But wherever I go, wherever I talk armored cable, my jobbers say to me—

Trial Examiner Norwood: Read that question.

(Question read by the Reporter.)

Trial Examiner Norwood: Now, there is no use in discussing how your custom grew up. But just tell us how this would create confusion if these cards went out showing the exact year and the exact price list without any numbering on the cards.

Mr. Houston: Your Honor please, if I may say so, I think that is the best way to explain the answer that Mr. MacIntyre is asking him for here. It seems to me now that the facts he is giving us are fundamental in considering—

Trial Examiner Norwood: If you think they are fundamental, you can bring them out on redirect, but he should answer this question.

Mr. Taylor: I submit he is answering the question asked, as to how the confusion would arise.

Trial Examiner Norwood: Answer the question
2885 just asked you, please.

The Witness: May I have the question again?

Trial Examiner Norwood: Read it.

(Question read by the Reporter.)

The Witness: The question is—

Trial Examiner Norwood: What confusion would arise from the absence of numbers on the card?

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The Witness: I think he says "how would this confusion arise?" Isn't that what he said there?

Trial Examiner Norwood: It says "how" and "why." Yes. How would it arise in the absence of the number under the circumstances I stated, and what confusion would arise?

The Witness: I don't see how I can answer that question correctly.

Trial Examiner Norwood: All right.

The Witness: I don't see how I can answer that.

Trial Examiner Norwood: All right. Go ahead. Proceed.

By Mr. MacIntyre:

Q. Once that you have sent your price cards to jobbers and you hear nothing from them, or any one of them, until you receive an order from one, that is, in accordance —ordering a specific amount of conduit—in accordance with the prices specified on the card but without restating that price in the order, what price do you bill
2886 him at? At what price do you bill him?

A. Most of the orders we take come from our sales people in the sales field, and they send the orders in to us on their regular forms applying to that particular field, on which the price terms and conditions are stated.

Mr. MacIntyre: Please read the question.

(Question read by the Reporter.)

Mr. Stewart: I am going to object to that question on the ground it is confusing. Now, just what does he mean? What difference does it make whether he hears from them after the card goes out, or what significance does it have?

Trial Examiner Norwood: I don't know what the counsel means.

Mr. Stewart: I don't either. I object to it.

Mr. MacIntyre: I don't think it is necessary to tell this witness what to answer. I am asking him now what he does in this type of situation.

Mr. Stewart: If the Examiner doesn't want to sustain my objection, that is another matter. I raise that objection.

Trial Examiner Norwood: Read the question.

(Question read by the Reporter.)

Mr. Stewart: Mr. Examiner, do you know what he means by that?

Trial Examiner Norwood: Well, I think that coun-
2887 sel would make us happier if he would reframe that question. That is open to argument. If he would ask one that isn't I would be happier also.

Mr. MacIntyre: All right. I can make it longer by asking a dozen or two questions.

Trial Examiner Norwood: We want to have it made shorter. I shall sustain the objection.

Mr. MacIntyre: All right.

(Discussion off the record.)

By Mr. MacIntyre:

Q. You send your price cards to your jobbers; do you?

A. Yes.

Q. And you receive orders from them direct?

A. Very rarely. Sometimes.

Q. Well, in those instances where you do receive them direct, your salesmen do not send them in to you; do they?

A. That's right.

Q. And there are instances where you do receive commitments from your jobbers by wire?

A. No. I couldn't testify to that.

Q. What?

A. I couldn't testify to that.

Q. You have no recollection of ever having received from your jobbers orders by wire?

A. I couldn't testify to that. I am not in that
2888 department. I am far removed from entering an order.

Q. Is it your testimony now, Mr. Bennett, that you do not receive and have not received orders from your customers after you send them your price cards in which they specify that they want you to ship them certain goods at prices specified, say, in card 80?

A. I can furnish you somebody that can testify to that exactly. I don't even see the order. I haven't got time.

Q. In other words, you do not know what is specified in the orders that you do get?

A. No, I don't look at them.

Q. You are not in a position to say now, then, whether or not that after the issuance of your cards to your customers they order direct on occasions specifying that you are to ship at prices specified in card 80?

A. My instructions to the department is not to ac-

cept anything below that card after the card is issued, unless they have instructions to the contrary.

Mr. MacIntyre: Please read the question.

(Question read.)

A. Well, the reason I answered you the way I did was because at the finish of the question you say "at card 80." I have got to say I can't answer that question because—

Q. Well, assume that that question is asked with reference to a period of time when your card 80 was in
2889 effect and before you issued other cards?

A. I am in a position to testify to the effect that after we issue a card and set our price that all of our orders must be filled on that basis, except prior obligations.

Trial Examiner Norwood: Do any orders you ever receive specify at prices according to some particular card?

The Witness: Various cards, yes, sir; various cards.

By Mr. MacIntyre:

Q. It is the usual instead of the exception that orders are received by your company specifying card numbers instead of particular prices?

A. I would say that is quite frequent, yes.

Q. It is usual instead of the exception; isn't it?

A. I couldn't testify to that exactly, because I don't see the orders.

Q. But it is the rule?

A. It is a good idea to think about that favorably that way. I don't know. I don't see the order.

Q. You don't know?

A. I don't know.

Mr. MacIntyre: Are you going to adjourn soon?

Trial Examiner Norwood: Right now. Recess until 1:45.

(Whereupon, at 12:10 p. m., a recess was taken until 1:45 o'clock p. m. of the same day.)

2890 **Afternoon Session.**

1:45 P. M.

Trial Examiner Norwood: Hearing come to order. Proceed.

I. A. BENNETT resumed the stand and testified further as follows:

Cross-Examination by Mr. MacIntyre (Resumed).

Q. Mr. Bennett, I show you Commission's Exhibit 616. Do you recognize the handwriting in the words "conduit meeting" down in the lower left corner of that page?

A. Yes, that is my writing.

Q. Your handwriting?

A. Yes.

Q. And what conduit meeting were you referring to when you jotted those words on that sheet of paper?

A. Well, I don't know, that depends on the next conduit meeting, whatever meeting it was.

Q. You mean of the—

A. Association.

Q. —Association?

A. Yes.

Q. And whose handwriting is this in the upper right-hand corner on that page?

A. I don't know.

2891 Q. You don't know that?

A. No.

Q. It refers to January 24 conduit meeting.

A. I don't know anything about that.

Q. Which is subsequent to the date of the letter, January 11, 1940?

A. Yes. I don't recognize that as any handwriting of any employee or anyone closely associated with me.

Q. What caused you to think of a conduit meeting on January 11, 1940?

A. I didn't think of a conduit meeting. I put that on there as a reference that I wanted to put in my conduit file, as a reminder whenever the next meeting might take place.

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Q. In other words, you put this on this letter to remind you of the next meeting?

A. Of the subject; whenever the next meeting might take place, yes.

Q. Of the subject of the letter?

A. Yes.

Q. Now, I am showing you Commission's Exhibit 80-R, which Mr. Houston showed you on direct. At the time that you were looking at that and answering his questions on direct you stated to him that the date of that document approximates the date of your change-over from a list discount method of quoting prices to your present method of quoting prices through the use of such freight
2892 adders as is shown by Commission's Exhibit 80-R, your freight rate compilations, and your price cards, and in that connection you told him that that changeover was for the purpose of making simple and easy the determinaticn of delivered price quotations. Do you remember that testimony?

A. I remember my testifying about it.

Q. To that effect?

A. I remember my testifying in regard to this, yes.

Q. Don't you remember testifying to the effect that I just stated?

A. Not to your exact words.

Q. Well, I know, but to that effect?

A. General effect, yes.

Q. Now, will you please explain to us how it is that the use of that method is more simple and easier than your previous one in the determination of delivered price quotations?

A. In order to answer that I would like to make a little study of the previous story. This is many years ago, and I haven't the records in front of me. I would like to make a study of it and file a brief or give you an answer.

Q. You are not in a position now to tell us the effect of the use of this method as distinguished from the effect of the use of the other method?

A. After 11 years without any reference and
2893 thought about the thing, I couldn't reasonably testify. I would be willing to, glad to, if I have an opportunity to go back over the records and get the story.

Trial Examiner Norwood: Read that question.

(Question read.)

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Explain to us how this method was used, Mr. Bennett.

A. Well, according to this book it says "Freight adders and terms," dated June 10, 1930. It shows minimum carloads and weights by States, Pittsburgh basing point. There is a key number that indicates the key to the rate to Anniston, Ala., carload lots, key 24. Less-than-carload lots, Key 43.

Q. And what is the symbol for the key there?

A. Anniston, Ala., 24; less-than-carload lots, 43.

Q. Twenty-four what?

A. Well, just the key number 24.

Q. Well, what does key number 24 mean?

A. I will explain that. Looking back over page 8 of the same book, it shows that the freight adder on half-inch conduit, key No. 24, is $5.38, therefore in order to obtain a delivered price on a carload of conduit shipped from our mill at Pittsburgh to Anniston, Ala., you would add to the price "X" $5.38 on the carload. On less-than-carload shipment, which would take the carload—less-than-
2894 carload rate, I would refer to page 9, and under the column "Size, half-inch," carry it out to key No. 43. To the price "X" would be added $9.64 to make the price delivered f.o.b. Anniston, Ala., on less-than-carload of half-inch conduit.

Q. Now, these prices are in terms of a hundred feet?

A. This is the price added per thousand feet.

Q. Yes, but you mean $9 a thousand feet?

A. Yes, sir; the figures that I gave on key 24 of $5.38, that $5.38 is to be added to the price per thousand feet, and then the page 8—9, the adder that I gave under key 43 of $9.64, that is an adder to the thousand foot price and covers a thousand foot of conduit delivered to Anniston, Ala.

Q. Is it your testimony that as of that date those two additions of $5 and something and $9 and something represented the applicable freight on such shipments to Anniston, Ala., from Pittsburgh?

A. This book gives the rates in price per thousand feet to all points named in it, and on page 2 is a note that reads: "To simplify auditing an amount equal to the 5 percent cash discount has been added to the freight." Therefore, the cash discount is allowed upon the total of the bill on

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the net delivered price. I think that answers your question.

Q. I don't believe that answers the question, Mr. Bennett.

A. I am sorry.

Mr. MacIntyre: Will you please read the question.

2895 (Question read.)

A. The obvious answer to that is, no, it does not. The explanation is in the book.

Q. But those amounts were used in the computation and quotation of delivered price books?

A. Yes.

Q. Is there any difference in the method which you then adopted and used from the method you are now using and have since that date used in figuring delivered price quotations?

A. May I have the present method in front of me to answer that question? A lapse of 11 years has occurred.

Q. I believe all of your freight adders that are in evidence are in the record at about this same point. Here is one numbered Commission's Exhibit No. 85—Commission's Exhibit 80 that is; 80-Z-55 is the number of that exhibit. I don't know that we have from your attorney or anyone else any freight adder book of your company of a later date than that.

A. The date of this book is 1930. The date of the previous book (referring to exhibit)—

Q. Do you know of any freight adder book put out by your company of a later date which is any different from the freight adder book of your company in evidence here as Commission's Exhibit 80-Z-55?

A. I should think so because of change of freight rates, and then during that 11-year period I am quite sure

2896 that the storedoor delivery completely changed our whole transportation rating system, and we must have had different books.

Mr. MacIntyre: May we go off the record a second?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Back to the record.

By Mr. MacIntyre:

Q. Well, now, Mr. Bennett, I am asking you whether you have issued any booklet providing for a conversion of freight rates from hundred pounds into terms of cents per

hundred feet since you issued the book which is shown as Commission's Exhibit 80-Z-55?

A. I will try my best. Now, be patient. Exhibit 80-Z-55 shows the change in the previous book from the charge per thousand feet to the charge per hundred feet.

Q. That is right.

A. Now, since that time I don't think we have changed our method. We still charge per hundred feet.

Q. Now, this Commission's Exhibit 80-Q is a delivery charge booklet of your company—

A. Yes.

Q. Dated November 20, 1930—

A. Yes.

Q. —showing—I mean providing for a conversion of rates into terms of cents per thousand feet?

2897 A. Right.

Q. Commission's Exhibit 80-R also—and which is dated June 10, 1930—also provides for a conversion of freight rates to terms of cents per thousand feet?

A. Right.

Q. Now, those two are dated June and November, 1930. Now, will you please tell us when you made the change from the use of those books to the use of the book which provides for conversion to terms of cents per hundred feet, as is shown by Commission's Exhibit 80-Z-55?

A. I do not know. This book has a—I do not know.

Q. You do not know?

A. No. I could find this answer for you in our file if I had our complete files. They are on record.

Q. Well, since June 10, 1930, has there been any method—I mean any change in your method of figuring delivered price quotations from the method provided for in Commission's Exhibit 80-R, and about which you have since noon testified, except the change which is shown by Commission's Exhibit 80-Z-55, that is, the—

A. Change in the method, you are talking about? I don't think there has been a change in the method.

Q. There has been no change in the method.

A. I don't think so. I think there has been a change in figures.

2898 Q. You have told us on direct examination that you instigated the hiring of Mr. Blake and the Organization Service Corporation.

A. I think so, in a general way, because of our—yes.

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Q. What was the first date on which you saw Mr. Blake and talked with him about the possibility of hiring him?

A. I don't know.

Q. Would you say that you talked with him before you hired him?

A. Oh, yes.

Q. But you don't know what that date was?

A. No. That is easily ascertainable.

Q. Now, you have told Mr. Houston that when Mr. Blake met with you and representatives of competitors of your company that he outlined to you his qualifications. Do you recall that?

A. No, I don't think I testified to that, no.

Q. You don't recall your testimony on that?

A. No. My testimony was that we called upon him as a committee and outlined what we required. At a later date Mr. Blake appeared before our meeting and outlined what he could do so for us in the matter of handling our—

Q. You used the term "outlined his qualifications" in your testimony?

A. Yes.

2899 Q. All right. Now, please tell us what he outlined to you as his qualifications?

A. Why, yes. Be glad to. Mr. Blake gave us an outline of his history in business, that he was an attorney, that he operated the Organization Service Corporation, that he was able to gather together the statistics that we required, and he was able—had an organization which could be adapted to checking our contract records we wanted checked. He discoursed somewhat at length on the Robinson-Patman Act and the New York law, which was bothering us at that time.

Q. When he outlined these qualifications of his, he told you that he had been managing, directing, and advising trade associations and various industry groups; didn't he?

A. He stated that he had been very successful in managing several associations; yes.

Q. Did he outline to you in what direction he had been successful?

A. Well, yes. The entire inference I got was that he had not been legally criticized by the Federal Trade Commission. I think he made that statement.

Q. He had not been criticized by the Federal Trade Commission?

A. Yes.

Q. Did he tell you whether or not that Federal Trade Commission had been investigating his activities?

2900 A. No. I don't recollect that.

Q. Did he tell you whether or not that there were any proceedings instituted against him by the Federal Trade Commission because of his activities?

A. No, he did not.

Q. Did he outline to you how many trade associations that he had been—

Trial Examiner Norwood: I don't—

A. I don't think— Pardon me.

(Record read.)

By Mr. MacIntyre:

Q. (Continuing.) —advising?

A. No.

Q. Or what associations they were?

A. No.

Q. Or the kind of work that he had been doing for them?

A. No. He did not.

Q. He just told you he had been doing work?

A. He gave us a synopsis of his experience.

Q. What is that?

2901 A. Along the lines that we asked him to give us in the work we wanted done. You see, we were a little shy on this Robinson-Patman Act because NEMA had gotten into trouble.

Q. On this occasion did Mr. Blake outline to you that he had employed and had carried on his employed list for some time Mr. Robert Booth, which would help him in carrying on affairs for you?

A. I don't think he mentioned Mr. Booth at all. He discussed his organization, that he had an office. I think he—I don't think he even told us where his office was.

Q. Well, now, let us see. He didn't tell you where his office was?

A. I don't think he did.

Q. Or who he had employed?

A. No.

Q. Or how many?

A. No. We weren't interested.

Q. Or what he had been doing for other trade associations?

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A. We weren't interested in those things.

Mr. Austin: Mr. Examiner, I think I object. I feel that on direct examination that your understanding of the record is correct; the statement was made that Mr. Blake attended a meeting and gave his qualifications. You have asked Mr. Bennett to tell you what he gave as his qualifications. He answered the question briefly, succinctly, and clearly. I see no point in going any
2902 further. I don't think it has anything to do with the issues in the case, and I don't see, personally, that it has anything to do with the direct examination that I heard.

Trial Examiner Norwood: I think that counsel may just go to the point and find out what he understood about this organization and whether—the only point I can think of at this time is whether or not he made the arrangement—when the witness made the arrangement for his company he knew any arrangements were being made for all other companies.

Mr. MacIntyre: Well, if Your Honor please, it is not a matter of companies here. It is a matter now of industries, 24 industries.

Trial Examiner Norwood: It is a matter of the knowledge of this witness of what kind of work the service—or corporation was doing. Now, you may bring that out, but I don't see—

Mr. MacIntyre. I am attempting to bring that out by asking him what kind of work he told him he was doing.

Trial Examiner Norwood: Go ahead. You are within your rights.

The Witness: Question?

Trial Examiner Norwood: Is there a question pending?

(Last question and answer read.)

Trial Examiner Norwood: Go ahead.

2903 By Mr. MacIntyre:

Q. Did you discuss with Mr. Blake—

Trial Examiner Norwood: That doesn't answer his question there, does it?

Read the question again.

(Question again read.)

Trial Examiner Norwood: Now, your answer there—he didn't ask you whether you were interested in that or not. He asked you whether you told him—

The Witness: I think he missed my answer, "No, we

weren't interested in what he had done for these other people."

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Did you on that occasion, or on any subsequent occasion, discuss with Mr. Blake the facts concerning your receipt of higher mill nets from some of your customers than you were securing from other customers?

A. No.

Q. And did he discuss it with you or any of the others, to your knowledge?

A. No.

Q. You made no inquiry of him as to whether or not that such might possibly involve violations of the Robinson-Patman Act?

A. Positively not.

2904 Q. You told Mr. Houston on direct that you were selling—at the time you hired Mr. Blake—conduit at different prices to different people in the same town and at different prices to different people in different towns. Do you recall that?

A. Right.

Q. Were you referring there to delivered price quotations?

A. I was referring to the basic discounts we were quoting, the card.

Q. Well, you were referring to the delivered costs to the customer; were you?

A. We always quoted delivered.

Q. I am asking you, though, what you were referring to in those answers that you gave Mr. Houston?

A. I am answering you by saying we always quoted delivered on all conduit quotations.

Q. Will you please answer my question?

A. I have answered your question, sir.

Trial Examiner Norwood: Well, at that time were you referring to delivered prices?

The Witness: At all times; yes, sir.

Trial Examiner Norwood: That would include that time, wouldn't it?

The Witness: Yes, sir.

Trial Examiner Norwood: Thank you.

By Mr. MacIntyre:

2905 Q. And, now, in that part of your reference to different prices to different customers in different towns, were you referring to delivered prices which took into account only differences in the applicable freight rates from a particular basing point?

A. Oh, my, no. No. No. Hadn't anything to do with it. That was a form of method of procedure that had not anything to do with the basic price—pricing of conduit.

Q. You didn't discuss that matter with Mr. Blake?

A. No, sir.

Q. And didn't attempt to determine from him whether or not that that might be construed as a violation of the Robinson-Patman Act?

A. No. There wasn't any differences in freight; quoted according to the book.

Q. Well, did you discuss with Mr. Blake on that occasion, or any subsequent occasion, the facts concerning your shipments to your customers in the Chicago area—

A. No, never.

Q. —and on which you took mill nets lower than on your shipments to your customers near Pittsburgh? Did you discuss those with Mr. Blake?

A. Never had any discussions with Mr. Blake regarding freights—or freight terms.

Q. I am talking about delivered price quotations
2906 which gave you mill nets.

A. Never talked with Mr. Blake regarding delivered prices.

Q. Or mill nets—

A. Or mill nets.

Q. —which you secured?

A. That is right.

Q. Now, you told Mr. Stewart—I mean—pardon me—Mr. Houston what you considered to be your over-all average of sales off the card in terms of percentage for the period from 1934 down to date. The very fact that you stated that as an over-all average for that period of time should be taken as an indication that at times you sold a greater percentage than that off your cards; shouldn't it?

A. It might. There might have been some conditions, some month, some day, some week, where, by reason of the competitive situation, we cut our price still lower, yes, and—

Q. And by the same token, the average for other periods would have to be raised above this average you gave him?

A. Undoubtedly. We have our peaks and our valleys.

Q. And you do recall that there were periods of several months where your price levels on your sales off card continued and at other times continued for several months when you were selling on the card; is that correct?

A. Perhaps I can answer you best by telling you that in all my experience I can't remember a 30-day
2907 period that our prices were stable; that we weren't selling off the card, from 1934 on.

Q. Is it your testimony now that there was never a 30-day period but what you sold completely off your card?

A. Not completely.

Q. Well, you didn't put that word in your last answer. Now, let us find out what you did mean by your last answer. Explain it.

A. What do you mean, by "completely"?

Q. Yes.

A. That our entire sales for 30 days were on the card or off the card? I haven't got your question so I can answer it.

Q. But there were periods of several months at a time when your average, in terms of percentage which you were selling on the card, were higher than this seven-year average which you gave to Mr. Houston; is that correct?

A. Well, what is "higher"? If you are talking about fractions, yes. If you are talking of any time during seven years or three years or a year since 1934, that any two months we had a price that we could maintain on conduit for 30 days or longer, my testimony is that we did not have any such period.

Q. But a higher percentage of your sales during some periods of one month, two months, or three months
2908 was a higher percentage than this over-all average for seven years?

A. Of 60 per cent.

Q. Yes.

A. Possibly.

Q. Well, can't you answer the question with any more definiteness than saying "possibly"?

A. Not without going over my records, no.

Q. Isn't it axiomatic, Mr. Bennett, that if you sell on some protracted periods at below the 60 per cent off card,

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that on others you would be selling over the 60 per cent for like periods of time?

A. Not at all. That is your idea, but a businessman's idea would be entirely different from that.

Q. Well, how do you get the average, then, if that isn't the fact?

A. Well, my average comes to me from reports that I get from the sales department showing how much we sold last month on this card, that card, this card, and the next card. Every month I get a report like that.

Q. Now, can you tell me what the reports were for the month of December, 1937?

A. No, sir; I couldn't. I couldn't remember back. I can get it for you, get it and bring it back to you.

Q. Do you remember telling Mr. Houston on direct that you had made no survey which would permit you to determine—

2909 A. Right.

Q. —from the survey what your sales had been?

A. Right. He requested me to make a survey over a period of 7 years, and I didn't have clerk hire to do it. With the other work we got today we—just was a physical impossibility, and we didn't do it. It can be done.

Q. You will agree with me that there were periods of time during this 7 years when more than 60 per cent of your sales were off card?

A. Depending upon what you mean by "sales" and what you mean by "percentage," I will agree with you.

Q. Well, you have used the term "percentage". We will let you use it in the same sense in which you have used it.

A. I used the word "percentage". I said in my testimony a certain percentage, and I said what it was. Now, you are talking about a percentage higher than that.

Q. Certainly.

A. Now, how much higher? How high is higher?

Q. Higher than 60.

A. All right. I will answer you, reasonably, yes, in fractions.

Q. Would you say that there were other periods—I mean that there were periods during this 7-year period of as much as a month or more during which your sales off card were lower than 60 per cent by as much as 10 per cent?

2910 A. I wouldn't say that, no. Now, I gave you a statement of average, or Mr. Houston a statement of average. Now, naturally, any man making a statement of average must take his chart up and down hills and valleys and strike an average. Now, if that average is 60 per cent there must have been some above the 60 and some below the 60, or otherwise you couldn't have an average. Now, I have given my testimony. I want it to stand that way.

Trial Examiner Norwood: Now, I want to remind you that you are on oath here, and you are supposed to be giving factual testimony, and I want you to quit arguing. Just answer the questions and let your lawyers do the rest.

The Witness: I am sorry. But I don't want—

Trial Examiner Norwood: And I don't like the demeanor that you are displaying at times here. So just remember that this is a solemn occasion and that you are under oath.

The Witness: I will be glad to.

By Mr. MacIntyre:

Q. On direct you told Mr. Houston that some of this material which appears in Commission's Exhibit 533-A and B—that is the counselor memorandum, if you need that to refresh your memory as to what it is—that some of that material you recall having given at a talk at a meeting. Now, will you tell us where that meeting was?

2911 A. Will you let me see the records, please?

Mr. Bozeman: If Your Honor please, it is my recollection that the witness' testimony was not exactly as just stated. I think, if I may say so, that he stated—

Trial Examiner Norwood: Wait a minute. If you are going to tell what he stated I will ask the witness to withdraw.

Mr. Bozeman: Well, I think that a responsibility rests on the man examining him to quote his testimony correctly.

Trial Examiner Norwood: Well, you object on that ground and I will have the witness withdraw and we will decide that question.

You do so object?

Mr. Taylor: I request Your Honor to have the witness withdrawn until we decide the question.

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Trial Examiner Norwood: Yes.

(Whereupon the witness withdrew from the hearing room.)

Mr. MacIntyre: I don't want to delay the proceedings that long. I will withdraw the question. We will let the record show who is right and who is wrong. Let us go on with the examination.

Trial Examiner Norwood: Now, read the question.

(Question read by the Reporter.)

2912 Trial Examiner Norwood: Now, tell the witness to come on in. Question is withdrawn.

Mr. Austin: Just a minute. Let us carry this thing through while the witness is out.

Trial Examiner Norwood: No. I am going to let him withdraw it. The record is made; you can do your own comparing.

Mr. Bozeman: Before he comes back to the room, I would like to say what my recollection was, namely, the witness said that some of this material sounds like stuff that he might have mentioned, whereas, if my recollection is correct, Mr. MacIntyre said "You did say" which completely changes the meaning.

Mr. MacIntyre: Now, I don't think I am going to hunt these things up.

(At this point the witness returned to the hearing room.)

(Discussion off the record.)

Mr. MacIntyre: I want the record to show that I am withdrawing that question, however, only because it was challenged on the grounds that it has been challenged and for no other reason; that I still feel it is a proper question and that the witness should have answered it.

Trial Examiner Norwood: The question is withdrawn. Go ahead. If there is any doubt about that, you may

2913 ask the witness what he did say.

Mr. Stewart: Here is the record if you want to see it.

By Mr. MacIntyre:

Q. What part of the service that was rendered to you by Mr. Blake and the Organization Service Corporation did you consider technical in nature?

Trial Examiner Norwood: Read the question.

(Question read by the Reporter.)

Trial Examiner Norwood: What part of that service did he consider technical. Go ahead.

Mr. MacIntyre: Get the witness' answer.

A. None.

Q. What part of the services which were rendered to you and representatives of your competitors by Mr. George Sicard do you consider technical?

A. Oh, somewhere around 50 percent.

Q. And what were those 50 percent—I mean what fell within that 50 percent of the technical work of Mr. George Sicard?

A. Secretary work and developing a very considerable number of papers relative to industry standards, arranging for conferences on our technical committees with departments throughout the country, the question of development of the proper threading, the question of the
2914 development of the proper type of steel to be used, proper diameters of pipe, thickness of pipe, number of threads on a piece of pipe, size and shape of the couplings, what constituted a length of pipe, including the coupling; a great many discussions were had with technicians on magazine, house building writers, developing an attitude towards promoting the rigid conduit system of wiring as the safest type of wiring.

Q. Would you consider any part of his work as executive secretary for the Rigid Steel Conduit Association in attending meetings and writing minutes of those meetings and carrying on correspondence with the members of the Association concerning meetings technical work?

A. He was—oh, not technical work, no. It was commercial work.

Q. That was commercial work?

A. Yes.

Q. And that is his 50 percent that you say did not constitute technical work?

A. Yes.

Q. I believe you have testified that you continue your membership in the National Electrical Manufacturers Association?

A. Yes.

Q. And have carried it for many years?

A. Yes.

2915 Q. What part of the work of Mr. Frank Hodkinson in the office as supervisory agency for the roughing-in classification of the National Electrical Manufacturers Association in receiving filed prices from various

conduit manufacturers and in disseminating that information throughout that industry do you consider technical?

Mr. Stewart: Well, now, that is objected to as irrelevant and immaterial.

Mr. Houston: Not proper cross-examination.

Mr. Stewart: That assumes the question of a state of affairs. There is nothing in the record to support it.

Trial Examiner Norwood: It goes to the witness' previous statement.

Mr. Houston: What was that, sir?

Mr. Stewart: What?

Trial Examiner Norwood: About certain duties which this company rendered being technical.

Mr. Stewart: Oh, no. No.

Mr. Houston: You misunderstand. That wasn't an association matter. That was an N.R.A. matter.

Mr. Stewart: Mr. Hodkinson was supervisory agency under the N.R.A. What has that got to do with us?

Mr. MacIntyre: The witness on direct testified that only a small percent of all the time spent in association meetings was on matters other than technical.

2916 Trial Examiner Norwood: Yes, but—

Mr. MacIntyre: That goes to all association activities of him and his competitors.

Mr. Stewart: That is just the very point of my objection, that Mr. MacIntyre's question assumes that the N.R.A. activities of Mr. Hodkinson were association activities, which I say is fallacious.

Trial Examiner Norwood: Read the question.

(Question read by the Reporter.)

Trial Examiner Norwood: Do you deny that the record shows that he acted in that capacity?

Mr. Stewart: You mean supervisory agency under the N.R.A.? No. What has Mr.—you see, Mr. MacIntyre's questions assume that Hr. Hodkinson's activities were association activities, and he is asking Mr. Bennett to give him his opinion as to how much of his activity as a supervisory agent was a technical activity.

Trial Examiner Norwood: I hardly think so.

Mr. Stewart: Oh, yes.

Trial Examiner Norwood: I think he is going to the explanation of—to the connotation of this word "technical" as the witness used it.

Mr. Stewart: Now, so long as it is confined to associa-

tion activities I have no quarrel, but what I am quarrelling about now is that this question assumes. If you
2917 are going to rule that the N.R.A. activity was an association activity, that is one thing—of the Rigid Conduit Association, that is one proposition. Now, if you are going to rule that Hr. Hodkinson was a supervisory agent acting under the N.R.A. and was acting for that organization, that is another proposition, but Mr. MacIntyre's question assumes that the N.R.A. activity of Mr. Hodkinson was a Rigid Conduit Association activity.

Trial Examiner Norwood: That is why I asked you whether or not you question that.

Mr. Stewart: Yes.

Mr. MacIntyre: If Your Honor please, it is of little moment whether we call Mr. Hodkinson an association, or whether we just call him plain Hodkinson when he acted as a common agent for all of these respondents. It doesn't matter whether he acted under the name of Hodkinson or some other name, but it was the association of these people together through this organization that I am asking about.

Trial Examiner Norwood: If it doesn't matter, why put this assumption in the question?

Mr. Stewart: That is right.

Trial Examiner Norwood: I shall sustain the objection, and we will have a five minutes recess.

(Whereupon a short recess was taken.)

2918 Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Mr. Bennett, you told Mr. Houston that the forms of your consigned stock agreements, your specific building contract agreements, which were in evidence here as Commission's Exhibits 664, 682, and 683, were submitted by you—your first draft of them—were submitted by you to Mr. Wilson, your attorney, and that he approved them in a written opinion that he gave you. Do you recall?

A. If those were the forms that were dated approximately February, 1937, yes.

Q. Where is that written opinion?

A. Undoubtedly in my files.

Mr. MacIntyre: Do you have it, Mr. Houston?

Mr. Houston: No, I don't. I know I have seen it in, I would say, the last couple of months, but where it would be—

By Mr. MacIntyre:

Q. Will you send it to me, Mr. Bennett?

A. I will.

Mr. MacIntyre: And will you certify as to its identification, Mr. Houston?

Mr. Houston: Sure.

By Mr. MacIntyre:

Q. Mr. Bennett, when you and your competitors
2919 use your price cards in quoting prices to the Federal Government in bids under seal, is it necessary for you and them to sit down and discuss with each other your bids in order that you and they quote the same prices?

A. We never discuss.

Q. Will you please answer the question. I asked you if it was necessary for you to do so in order to get the same prices.

A. Will you please read the question?

(Question read.)

Mr. Stewart: May I suggest to my friend he does not mean your price cards, but he means their price cards.

Mr. MacIntyre: I think he understands.

Mr. Stewart: Well, I object to the question, then.

By Mr. MacIntyre:

Q. Well, I will say your price cards and their price cards bearing the same number, for example, No. 84.

A. May I have the corrected question so I can answer it?

(Record read.)

A. As I understand your question it says that I and my competitors sit down and figure this up. It is like the old, old chestnut—

Trial Examiner Norwood: Wait a minute. I don't want you to comment or illustrate there. If you can answer the question, answer it; if you cannot, why, say you cannot.

2920 Do you want it read again?

The Witness: Yes.

(Record read.)

A. No. That is some question.

By Mr. MacIntyre:

Q. I am showing you Respondents' Exhibit 141-A to D, inclusive. I believe you have testified that that letter went to consignment stock jobbers. Do you recall?

A. Yes. To our distributor agents.

Q. And is it your testimony that many of those also handle and were handling at that time conduit manufactured and sold by other conduit manufacturers?

A. Some of them.

Q. A number of them? Is that correct?

A. Some.

Q. Well, how many?

A. My testimony is some.

Q. How many?

A. I don't know.

Q. It would be quite a number, wouldn't it?

A. I couldn't tell without an examination of my records. I will be glad to look it up. It would be a difficult job.

Q. Isn't there quite a number of your consignment jobbers who are also consignment jobbers for your competitors?

A. Quite a number.

2921 Q. And you send those to all of your consignment jobbers?

A. To our consignment jobber agents.

Q. Now, this I. A. Bennett & Company in Chicago still handles your product, doesn't it?

A. Still our agents.

Q. They handle your product on a consignment basis?

A. No.

Q. In what manner do they handle your product?

A. They are our sales agents, meaning manufacturers' agents, working on commission.

Q. They do not act in the same manner for any other conduit manufacturer?

A. Not for any other conduit manufacturer.

Q. They are working solely for the interests of the National Electric Products Corporation?

A. They may handle other products, but not in competition with us.

Q. But in so far as they have anything to do with conduit it is for the interests of the National Electric Products Corporation?

A. Entirely.

Q. You recall having attended meetings of the Rigid Steel Conduit Association and of the Rigid Steel Conduit Industry which were also attended by representatives of Triangle Conduit & Cable Company. Is that correct?

2922 A. In earlier years, but not the last 10 years, or, I might say—let us make it 8 years—I haven't attended any meetings where the Triangle Conduit & Cable Company attended the same meeting.

Q. When was the last time that you attended a meeting in which Mr. J. A. Hawks attended?

A. Well, I think about a year ago, but I withdrew immediately when I found he was there.

Q. And when was the last time you attended a meeting at which Mr. J. E. McAuliffe was there?

A. Probably eight or nine years ago.

Q. And Mr. Slater of that company?

A. The same story.

Q. You were members of the Rigid Steel Conduit Association at the same time that Triangle was a member?

A. Yes.

Q. And you knew that fact?

A. Right.

Q. And you knew of the fact that Mr. Hawks and Mr. McAuliffe were attending meetings of the Association?

A. When I knew it I didn't go.

Q. But you knew they were attending some of the meetings?

A. Some of the meetings. And when I found out I went and left the meeting.

Q. You told Mr. Houston this warehouse stock
2923 problem was a common problem with your competitors?

A. All manufacturers.

Q. It has been so recognized at times, hasn't it, by you and representatives of your competitors?

A. It has been recognized by us always, every day.

Q. Isn't it a fact that you know it has been so recognized by others?

A. I might talk some hearsay, but why not ask them? I am not testifying for them.

Q. Well, haven't they told you that it was a problem with them?

A. Who?

Q. Representatives of your competitors.
A. Oh, no—all right. I don't think so, no.
Q. Are you testifying now that they have not?
A. I think that from time to time I have talked to this man or that, it has been a subject of conversation.
Q. About that problem?
A. Yes.
Q. And they were representatives of your competitors?
A. Yes.
Q. Now, this Williamsburg Power Plant contract which you discussed with Mr. Houston, how did you learn that the General Electric Company had made some commitments on that deal?
A. I didn't say they had.
2924 Q. Well, what was it that you told us about the General Electric Company then?
A. I stated that the General Electric Supply Corporation had a commitment with Haetzler & Buehler.
2925 Q. How did you ascertain that?
A. From our salesmen in New York.
Q. You didn't find it necessary to use the facilities and services of the Organization Service Corporation in ascertaining that fact, did you?
A. No, we wouldn't take up anything like that with the Organization Service Bureau.
Q. In other words, you could learn all about this through your sales force?
A. Yes.
Q. And you did in this instance learn all about it?
A. We learned.
Q. You discussed with Mr. Houston the provision in your contract which you said was there to prevent speculation on the part of jobbers and wholesalers?
A. Yes, sir.
Q. Why did you desire to prevent speculation by wholesalers and jobbers?
A. Because this disturbs our relations with our other distributing agents.
Q. That is, they cannot keep on an even keel in competition with each other. Is that correct?
A. One company could have enough money to buy and another company may not.
Q. And would, therefore, be able to out-compete
2926 the other one. Is that correct?

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A. Well, create an unfair trade relation, I think.
Q. Through the beating of the competition of the other; is that correct?
A. Yes.
Q. That is what you mean by these expressions?
A. That's right.
Mr. MacIntyre: I believe that is all.
Trial Examiner Norwood: Redirect.

Redirect Examination by Mr. Houston.

Q. Mr. Bennett, Mr. MacIntyre showed you Commission's Exhibit 616 with a pencil notation at the bottom of the page: "conduit meeting" and I believe you told him that you had made that notation at the foot of the page. Is that correct?
A. That's right.
Q. Now, did you make this notation at the top of the page in writing: "January 24 conduit meeting"?
A. No.
Q. Do you know who did?
A. No, I don't recognize the writing.
Q. Mr. Bennett, did you take this letter to the meeting on January 24, 1940?
A. No, I don't take the letters to meetings.
2927 Q. Did you discuss this letter at that meeting?
A. I don't recollect that I did. I don't think so.
Q. Did you discuss the subject matter of that letter at that meeting?
A. I don't think so.
Q. Mr. Bennett, you stated to Mr. MacIntyre that the I. A. Bennett Company of Chicago was the sales agent, manufacturers' agents, I believe, of National.
A. Yes.
Q. How many others do you have like that?
A. A few others, one in Denver and one in Salt Lake City.
Q. And how do you sell direct?
A. Through our home established offices, all on a salary.
Q. Well, to what extent is your conduit sold through distributor agents, through consigned stock arrangements?
A. We sell most of our conduit through consigned stock, distributor agents, but through our own sales force. There is a wide gap.

Q. What differences do you make there?

A. Well, the sales agent, the manufacturers' agent, is a direct representative of our company, representing us exclusively, while the distributor agent is a consigned stock non-exclusive agent. Our direct manufacturers' agent is directly under every instruction and rule of the company, while the distributor agent is not.

Q. Then I believe you also spoke of salesmen in
2928 your last answer.

A. Our salesmen also are under our direct individual supervision.

Q. Are your salesmen paid a commission on the sale of conduit?

A. No. Salary.

Q. And what is their job?

A. Their job is to do missionary work, create a demand for the product. They call on industries, railroads, contractors, architects, engineers.

Q. And what per cent. of your conduit sales are made through distributor agents?

A. Well, I would be inclined to say 99 per cent.

Q. Mr. MacIntyre spoke to you about the fact that some of your distributor agents were buying conduit from their consigned stock for their own account. Is that a fact, in certain cases?

A. We have found that that has been so.

Q. And I believe you also stated to Mr. MacIntyre that the distributor agent would later make a sale of that conduit on his own account. Is that correct?

A. Yes. Yes.

Q. Mr. Bennett, in your letters you use the term "re-sale." In the use of that term "re-sale," do you include the sale made by one of your distributor agents who
2929 has bought conduit from his consigned stock on his own account, and then re-sells to some customer? Is that second sale, under this situation—in that situation—covered by your term "re-sale," in your letters?

A. Well, perhaps, unfortunately, but it is so, my reference to "re-sale" is a general term that I use.

Q. To what sale do you apply it?

A. I apply it to the second sale. The original sale is either made by the manufacturer, or if the consigned stock agent sells our conduit under our consigned stock agreement, that is the original sale. If he buys conduit on his own hook and then re-sells it, I consider that a re-sale.

Q. Mr. Bennett, will you look at Commission's Exhibit 590, please. In the fourth paragraph of that letter, you use the language "under our directed re-sale prices." Now, what do you mean by the term "re-sale" as used in that connection?

Mr. MacIntyre: I object. The witness answered that precise question on direct. His attention was called to that particular exhibit. Now, I haven't picked the exhibit up, haven't gone back into those particulars, I have attempted merely to get certain broad, general understandings from this witness.

Mr. Houston: But I think Mr. MacIntyre went into this problem again of re-sale.

Trial Examiner Norwood: I don't recall that he
2930 went into it at all.

Mr. Houston: I believe he did, sir,—well, if there is any doubt in your Honor's mind about it, I will withdraw the question.

Trial Examiner Norwood: If he agrees with counsel that he answered it heretofore, there is no use of opening this thing up and causing another cross-examination, and see-sawing here.

Mr. Houston: I may be mistaken.

Mr. MacIntyre: He asked him questions about that on direct. I did not pick up the particular exhibits—

Mr. Houston: I will agree I was mistaken and will withdraw the question.

Trial Examiner Norwood: Off the record.

(There was a discussion off the record.)

Trial Examiner Norwood: Proceed.

By Mr. Houston:

Q. Mr. Bennett, in the case where one of your distributor agents buys conduit from his consigned stock of your product for his own account and later re-sells it to a consumer, do you make any effort to control the price at which he re-sells to the consumer, under those circumstances?

A. No, we never know about this until long after it occurs. Unless it is a violation of our contract, it is something that is not brought to our notice.

2931 By Trial Examiner Norwood:

Q. You don't like him to buy and break the price, do you?

A. No. If we have a rule we don't like him to break that rule.

By Mr. Houston:

Q. But if he breaks that rule—do you dictate to your distributor agent the price at which he resells to the consumer?

A. No.

Q. Mr. Bennett, you have stated to Mr. MacIntyre that you intend to enforce the terms of your specific building contracts. Among the provisions of those contracts is one to the effect that if between the date on which the contract is signed and the date on which conduit is required on the job, the price of conduit goes up, the purchaser is entitled to the lower price which was in effect at the time the contract was entered into.

A. That's right. That is what the contract is for.

Q. Now, do you observe that provision of your contract, your carrying out of that provision of your contract?

A. Yes. If the price goes up, he gets the price on the contract.

Q. I believe it is also in your specific building forms that in case there is a lowering in the price of your conduit between the date the contract is entered into, and
2932 the date the conduit is required on the job, you give the purchaser the benefit of that lower price in existence at the date the conduit is taken out for the job?

A. Yes.

Q. Do you observe that provision of your contracts?

A. Yes.

Q. Mr. Bennett, you stated to Mr. MacIntyre that in the past eight or nine years, when a representative of the Triangle Conduit and Cable Company entered a meeting of the Association at which you were present, you left, and you have also stated that if you knew a representative of that company was to be present at a meeting, you did not attend.

Were the reasons why you did not attend the meeting at which these men were present—is that a personal reason?

A. Yes. I dislike their business methods.

Q. Mr. Bennett, Mr. MacIntyre has asked you about Card 72 which I believe was issued by your company some time in March of 1936. Do you recall Card 72?

A. Yes, indeed.

Q. Mr. Bennett, did your company first issue the prices which are stated in your Card 72?

A. No, sir.

Q. When did you first learn that any prices like those in Card 72 were being quoted by any of your competitors?

A. Our Chicago office called me on the telephone,
2933 told me that the prices were being quoted by the Fretz-Moon Company. They got it through a mutual jobber.

Mr. Houston: I believe Mr. Robison has some questions.

By Mr. Robison:

Q. In the early part of your cross-examination, you were questioned regarding fixed charges that your company have; that is, charges which do not fluctuate in keeping with the rate of production, and, in answer to a question on that subject, you said that you had overhead and burden.

Did you mean those two terms to indicate the same thing or two different things?

A. Two different things.

Q. And then you were questioned as to what was included in what you term "overhead"?

A. Yes.

Q. You were not asked to state what charges of that nature are included in "burden".

A. No.

Q. Will you tell us now the nature of the charges which you include in your term "burden"?

A. Factory operation, maintenance, depreciation, obsolescence.

Q. Taxes?

A. Taxes.

Q. And one other question you were asked was whether there was any labor included in your overhead. You said "no."

2934 I ask you now whether there was labor included in what you term "burden."

A. No.

Q. You would not have, in connection with factory maintenance, and in connection with cost of light, heat, and power, you would not have some labor?

A. I would have in all probability—I am not sure—we

would probably have watchmen in burden; we would—unquestionably, in overhead, we have salesmen costs and stenographers' hire.

Q. Well, I don't think that the term "labor" as used in the question asked you had reference to that particular kind of service, but am I to understand that in connection with your cost of light, heat, and power, you do not have any labor charges?

A. When I refer to labor charges, I refer to labor directly applicable to manufacturing costs.

Q. That is what I thought. Do you ever have indirect labor?

A. Yes.

Q. And that would go into burden?

A. Yes. That would go into burden. That's right.

Mr. Robison: That is all I have.

By Trial Examiner Norwood:

Q. Some of those costs are variable, are they not? I mean, you can eliminate them on occasion. Like advertising?

2935

A. Oh, yes, that is, in overhead, we can vary them, yes. In burden, we have to maintain the plant, willy-nilly.

Recross Examination by Mr. MacIntyre.

Q. That same answer would apply to salesmen, wouldn't it?

A. The possibility of firing them and hiring them, yes.

Q. Reducing them when you don't need as many because of a drop in the volume of business?

A. Yes. If we wanted to.

Q. And the same answer would apply to stenographers and certain office forces?

A. That's right.

Q. You don't need as many men when you are not doing as much business?

A. That's right.

Q. And as to the wearing out of vehicles used by salesmen, traveling expenses, that is reduced when their activities are reduced?

A. All of that comes within the policy of operating.

Mr. MacIntyre: Now—

Trial Examiner Norwood: All right.

Mr. MacIntyre: I would like to follow that question of overhead that was brought up by Mr. Robison just a little further.

2936 Trial Examiner Norwood: I thought we had covered it. Go ahead. I think, though, that you examined him on that on previous cross, didn't you?

Mr. MacIntyre: Mr. Robison brought in a new angle I would like to ask him about.

Trial Examiner Norwood: All right.

By Mr. MacIntyre:

Q. What portion of your total cost is operating labor?

A. I don't know.

Q. You don't know whether it is ten per cent., twenty per cent.,—

A. I wouldn't make a wild guess to you.

Q. Or forty per cent. Do you?

A. I wouldn't make a wild guess to you.

Q. What part of your total cost is your raw material?

A. Well, let me see—60 or 65 per cent.

Mr. MacIntyre: That is all.

By Mr. Robison:

Q. Does that refer to all raw material or only to pipe?

A. Pipe.

Mr. Robison: That is all.

Trial Examiner Norwood: That is all.

(Witness excused.)

Trial Examiner Norwood: Have you another witness?

2937 Mr. Stewart: The next witness will be Mr. Blake, and I would rather not start with him for fifteen or twenty minutes, but I would like to clear one matter this evening.

Trial Examiner Norwood: Go ahead.

Mr. Stewart: In Mr. Quinn's examination, Mr. MacIntyre made some inquiry on contracts on Government buildings here, and Mr. Quinn promised to produce some documents. Now, I have them and I ask that they be marked as exhibits.

Trial Examiner Norwood: Respondent's Exhibits?

Mr. Stewart: Yes, sir.

Trial Examiner Norwood: Mark them.

(The documents referred to were marked "Respondent's Exhibits 143, 144," for identification.)

Mr. Stewart: And I would like to ask if Mr. MacIntyre will accept Mr. Quinn's corrections as to the years. He says he finds, in looking at the contract, it is 1939 instead of 1938. I am just wondering whether you will accept his statement which he gives me in this letter, that he finds the date is May, 1939 instead of May, 1938.

Trial Examiner Norwood: All right. 143 and 144.

Mr. Stewart: I offer these documents in evidence in connection with the testimony of the witness Quinn.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: Yes, I do object to them being offered in this way at this time. May we go off the record 2938 a second?

Trial Examiner Norwood: Yes.

(There was discussion off the record.)

Mr. Stewart: I am willing to stipulate that these contracts were under consideration for a considerable time before they were actually signed by my client and, for whatever that language means, whatever construction may be placed on it, Mr. MacIntyre is at liberty to make his argument.

Trial Examiner Norwood: Yes.

These contracts are offered as part of the testimony of Major Quinn in the cross-examination of him.

Mr. MacIntyre: Will you also stipulate that the contracts were entered into on May 12, 1939, and that the consideration that you made reference to in your offer was a consideration by both the purchaser and the seller as to prospective prices at which the contracts were finally closed?

2942 PROCEEDINGS.

Trial Examiner Norwood: Hearing come to order.

Pursuant to adjournment yesterday, the hearing in Docket 4452 is now reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C., 10 o'clock a. m., on the 12th day of December, 1941.

HERBERT S. BLAKE was thereupon called as a witness for the Respondents and, having been first duly sworn, testified as follows:

Trial Examiner Norwood: Give us your full name, please.

The Witness: Herbert S. Blake.

Trial Examiner Norwood: Go ahead.

Direct Examination by Mr. Stewart.

Q. Where do you live, Mr. Blake?

A. Glen Ridge, New Jersey.

Q. Where is your office?

A. I have two offices in New York, a law office at 15 Broad Street, and then I have my office as president of the Organization Service Corporation at 74 Trinity Place.

Q. Are you a graduate of any university, Mr. Blake?

2943 A. I am a graduate of the University of Wisconsin.

Q. Now, from the time of your graduation from the University of Wisconsin were you engaged in any business?

A. Yes.

Mr. MacIntyre: I object as to the business—

2944 Trial Examiner Norwood: Overruled.

Mr. MacIntyre: —associations of this man back at the time he graduated.

Trial Examiner Norwood: Go ahead.

The Witness: Your question was—

Mr. Stewart: Read the question.

(Question and answer read by the Reporter.)

A. Yes.

By Mr. Stewart:

Q. What was it?

A. I was chiefly engaged in the organization and reorganization of industrial companies, chiefly from the financial and merchandizing end.

Q. And for how many years were you engaged in that endeavor?

A. Well, I might be said still to be engaged in that endeavor.

Q. Are you a graduate of any law school?

A. I am.

Q. What law school?

A. New York Law School

Q. Are you a member of the Bar?

A. I am a member of the Bar of the State of New York.

Q. When was the Organization Service Corporation organized?

A. 1918.

Q. Is it a New York corporation?

2945 A. It is.

Q. Among the respondents here, Mr. Blake, are Herbert—or is, I should say, instead of are, Herbert S. Blake, Jr. I take it he is your son?

A. Yes.

Q. Is he an officer of the Organization Service Corporation?

A. Yes, sir.

Q. What if anything did he have to do with any of the matters covered by the complaint in this case?

Mr. MacIntyre: I object. Let us ask the man what the facts are.

Mr. Stewart: That is the fact.

Mr. MacIntyre: Instead of attempting to go to conclusions as to what the facts are.

Trial Examiner Norwood: Overruled. Overruled. He has asked him for factual matters. Answer the question.

The Witness: Please read the question.

(Question read by the Reporter.)

A. Not anything.

By Mr. Stewart:

Q. Now, among the respondents is Paul Weiss. What if anything did he have to do with the matters alleged in this complaint?

A. Mr. Weiss is treasurer of Organization Service Corporation. He also is head of the statistical depart-
2946 ment of that Corporation. As such he supervised the handling of the statistical work which was done for the Rigid Steel Conduit Association. Also at one time and for a short time Mr. Weiss was the assistant treasurer of the Rigid Steel Conduit Association.

Q. Now, who are the other officers of the Organization Service Corporation, in addition to yourself and your son and Mr. Weiss?

A. Miss C. C. Gregory is secretary. Mr. Myles Brown—N. Myles Brown is a vice-president. Mr. Thomas B. Jordan is a vice-president.

Q. Now, C. C. Gregory is Miss Gregory you are talking about?

A. Miss Gregory.

Q. Now, what, if anything, did she have to do with the matters alleged in this complaint.

A. Nothing, except as my secretary to take such correspondence and other dictation as might be relevant.

Q. And what did Mr. Thomas B. Jordan have to do with the matters alleged in the complaint?

A. Not a thing.

Q. And with reference to N. Myles Brown, what if anything did he have to do with the matters alleged in the complaint?

A. He had no contact other than an introductory contact in the initiation of Rigid Steel Conduit.

Q. Now, Mr. Blake, in connection with your—well,
2947 first, will you state the nature of the service performed by Organization Corporation for its clients in a very general way?

A. Well, its chief—its chief business is the servicing of trade, organizations known as associations or institutes, in the matter of furnishing them with office facilities, taking care of what clerical work there is in connection with their operation, handling the gathering and dissemination of statistics, arranging for and assisting in the holding of meetings of such organizations. I think, in a general way, that covers it, Mr. Stewart.

Q. Now, in connection with the service you perform for your clients, have you familiarized yourself with the law and decisions which relate to trade association activities?

Mr. MacIntyre: I object. I think that is so obvious that it shouldn't call for an objection.

Trial Examiner Norwood: Objection overruled.

Mr. Stewart: You mean that you admit that he has?

Trial Examiner Norwood: Objection overruled.

A. I—

By Mr. Stewart:

Q. Go ahead, Mr. Blake.

A. I have endeavored, to the best of my ability, to keep in touch with the decisions of the various courts in connection with matters of that character, the work of the
2948 Federal Trade Commission, and other governmental bodies, statutes.

Q. Now, directing your attention to the matter of the employment of Organization Service Corporation by Rigid Steel Conduit Association, when was your first contact with any representatives of Rigid Steel Conduit Association?

A. About the middle of August, 1936.

Q. And how was your contact brought about?

A. I was introduced to Mr. James Barton of the Fretz-Moon Company by our Mr. N. Myles Brown. Mr. Barton was in New York and expressed to Mr. Brown, whom he knew, the desire to meet someone who had some information or knowledge in connection with association work.

Q. Now, then, with whom did you first talk with reference to the employment of Organization Service Corporation by Rigid Steel Conduit Association?

A. Mr. Barton.

Q. Mr. Barton. Subsequent to that conversation, did you have any conferences with representatives of Rigid Steel Conduit Association?

A. I did.

Q. Who were they?

A. The day following my having met Mr. Barton, Mr. Barton asked me to come up to the technical office of the Conduit Association, where he introduced me to Mr. Bennett.

Q. May I interrupt, Mr. Blake? Where was the
2949 technical office at that time?

A. 42nd Street.

Q. I am sorry. Now, go ahead.

A. And my conversation with Messrs. Bennett and Bar-

ton was approximately the same as that that I had with Mr. Barton the day previous.

Q. Now, did these gentlemen explain to you why they wanted the services of Organization Service Corporation?

A. I don't think they explained to me why they wanted the services of Organization Service Corporation. They explained to me why they wanted to employ the services of some one who could assist them in reshaping the affairs of the Association which previous to that had been in existence, was in existence; gave me a general outline of the conditions in the industry as they saw them, and asked my views as to ways and means of conducting the affairs of the association that would put it in better operating condition. They were particularly interested at the time in an analysis of the Robinson-Patman Act and were apparently quite keenly interested in reshaping their individual practices in the industry to conform more nearly to the Robinson-Patman Act, as they thought was necessary.

Mr. MacIntyre: I move to have that statement of the witness stricken. He is, of course, clearly in the statement stating a conclusion in that he said "apparently that is what they wanted."

2950 Trial Examiner Norwood: Did they—

Mr. Stewart: I was going to ask him that. I just didn't break up the answer.

Trial Examiner Norwood: Counsel's point is well taken there.

Mr. Stewart: I beg your pardon?

Trial Examiner Norwood: The counsel's point is well taken there as to his speculation there.

Mr. Stewart:

Q. Mr. Blake;—

Trial Examiner Norwood: Wait a minute.

Mr. Stewart: I agree that that portion may go out.

Trial Examiner Norwood: Yes. Motion is granted as to striking the statement beginning with "apparently" in referring to the Robinson-Patman Act.

Go ahead.

By Mr. Stewart:

Q. Mr. Blake, what did these gentlemen tell you was their principal concern at the time?

A. They told me definitely that their principal concern was—

Trial Examiner Norwood: Who was it told you that?
The Witness: Mr. Bennett—

By Mr. Stewart:

Q. Messrs. Bennett and Barton?

2951 The Witness: —and Mr. Barton. That their most definite concern was with reference to the Robinson-Patman Act and the effect that it had upon their conduct of their business.

Q. Now, do you remember about when your conference was with Mr. Bennett and Mr. Barton, about when?

A. Well, I place it as just before Labor Day, because that is my memory on it because of my leaving town immediately following my talk with them.

Q. Now, then, to what extent did you after that meeting undertake to familiarize yourself with the problems of the industry about which these gentlemen had spoken?

A. Well, they gave me a very good outline of the general status of matters in the industry, so clear an outline that there wasn't anything further that I did. Now, they—I should have added that in my talk with Mr. Barton and Mr. Bennett they stated that they expected to hold a meeting of the Conduit Association on September 10, I believe it was, and asked me if I would be willing to attend that meeting and discuss the subject further.

Q. Well, now, based on your previous business experience and your experience with trade association matters up to that time, were you able to form in your own mind an idea as to what their problems were?

Mr. MacIntyre: I object.

2952 Trial Examiner Norwood: Objection overruled.

A. Well, I was, yes, and I obtained considerable more information at the time of the meeting on September 10th when various of the gentlemen present expressed their views as to the state of affairs in the industry.

By Mr. Stewart:

Q. Well, state to what extent you had made at that time a study of marketing problems. Was it extension or slight, or will you just tell us in a very general way so that the record may show your knowledge of the problems with which you were dealing?

Mr. MacIntyre: I object. It calls for irrelevant and immaterial matter.

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Trial Examiner Norwood: Read the question.

(Question read by the Reporter.)

Trial Examiner Norwood: Overruled. Answer the question.

A. Well, I would deem my contact with selling, marketing problems, to have been quite extensive. It has been my business from the time I left college to study marketing problems, and in the handling of the affairs of the various associations with which I was in contact I naturally looked into the marketing conditions carefully and studied them.

Q. I don't believe I asked you what year you left college.

A. I left college in 1894.

2953 Q. And from what date had you acted as financial counsellor to various organizations?

Mr. MacIntyre: I object. I didn't think that we were having involved here as an issue the financial difficulties.

Trial Examiner Norwood: Objection overruled. He can show this background here as bearing on the motives of respondents in employing this witness,—

Mr. Stewart: Certainly. You are always entitled to show what a man is—

Trial Examiner Norwood: —his objectives and possibly their methods.

The Witness: Well, may I answer?

Trial Examiner Norwood: Yes.

A. My direct attention to financial aspects of corporate work commenced really around 1900.

By Mr. Stewart:

Q. Now, then, did you attend the September 10, 1936, meeting that you have referred to?

A. I did.

Q. And what did you do at that meeting?

A. I gave them an outline of the type of service that was rendered by Organization Service Corporation and expressed my views on some of the problems that confronted the industry as related to me by the gentlemen present.

2954 Q. Now, Mr. Blake, without bothering about dates, but beginning with the date September 10, 1936, and up until the date of the contract, did you have negotiations with representatives of the Rigid Steel Conduit Associa-

tion with reference to making a contract with them for the service—

A. I did.

Q. —desired?

A. I did.

Q. Now, with whom did you talk, if you recall? I mean what particular representatives of the Rigid Steel Conduit Association?

A. I had a conversation following the meeting with Mr. Barton, and Mr. Bennett. I had a further conversation with Mr. Bennett and Mr. Walker. I don't recall any others until the date of the meeting on October 29.

Q. Well, what I am trying to get at is are these the only gentlemen—the ones you have named—with whom you talked about the matter of entering into a contract for services on behalf of the Organization Service Corporation up to the date of October 29?

A. Yes, other than talking to what members were present at the meeting on September 10.

Q. Oh, yes. Now, then, coming down to the date of October 29, 1936, was that the date on which the contract was entered into?

2955 A. Yes.

Q. I show you Respondent's Exhibit 64-A to D, inclusive, ask you to look at it, Mr. Blake, and tell us whether or not that is the original contract—or one of the copies of the original contract between Organization Service Corporation and Rigid Steel Conduit Association.

A. It is.

2956 By Mr. Stewart:

Q. Did you have any side agreements, Mr. Blake, outside the document I have just shown you, with relation to the services of the Organization Service Corporation?

Mr. MacIntyre: Now, if there are any written agreements, if he is talking about that, I want them produced rather than—

Mr. Stewart: Well, we will get to that. I can't do it all at once.

2957 Trial Examiner Norwood: Well, you can't get them produced until you determine whether or not they exist.

Mr. Stewart: That is what I assume.

Trial Examiner Norwood: Objection overruled.

A. There were none other than that agreement, no verbal.

Trial Examiner Norwood: No verbal agreements?

The Witness: None.

(Thereupon certain documents were marked "Respondents' Exhibits Nos. 145-A, 145-B, 145-C, and 145-D," inclusive, for identification.)

By Mr. Stewart:

Q. Mr. Blake, I overlooked asking you whether or not you had a copy of the certificate of incorporation of Organization Service Corporation. I show you Respondents' Exhibit 145-A to D, inclusive, and ask you to look at it and tell us whether or not that is a true and correct copy of the certificate of incorporation of Organization Service Corporation?

A. It is.

Mr. Stewart: I offer Respondents' Exhibit 145-A to D, inclusive, in evidence.

Mr. MacIntyre: The offer is objected to as being cumulative and presenting unnecessary details.

Trial Examiner Norwood: This is a certificate of incorporation. What do you want to show by this?

2958 Mr. Stewart: Well, I suppose that the only reason that I am offering it is to show that is the scope of the activities of the corporation as defined by its Articles of Incorporation. One way to prove it. I don't know that it is so essential, if Mr. MacIntyre doesn't want it.

Trial Examiner Norwood: I should think that is the long way to go at it.

Mr. MacIntyre: I will withdraw the objection to it if he feels it is important to the case.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBITS NOS. 145-A to D, inclusive, were offered and received in evidence.

Trial Examiner Norwood: Thank you.

2959 By Mr. Stewart:

Q. I show you Commission's Exhibit 533-A, ask you to look at it, familiarize yourself with it.

(The witness refers to exhibit.)

Q. To save time, let me ask you, Mr. Blake, have I shown you that document or a copy of it, previous to your going on the stand?

A. I have seen a copy of it.

Q. Well, you are familiar with the document itself. If you will look at the first page and the second page you can tell whether or not you have seen that document. You won't have to sit there and read it.

A. Yes, I have seen it.

Q. All, right. Now, when was it that you first saw that document?

A. To the best of my—

(Discussion off the record.)

A. (Continuing.) To the best of my knowledge and belief, I never saw that document until I asked Mr. Welch to give me a copy of it, and as I had seen that it was mentioned in the testimony.

Q. And whose testimony first brought it to your attention?

A. The testimony of Mr. Booth.

Q. Did you prepare that document?

2960 A. I did not.

Q. Now, Mr. Blake, are you able to testify as to whether anybody in the Organization Service Corporation prepared this document?

A. I am not prepared to testify that no one did, no. You don't wan't my opinion.

Q. Now, I ask you to look at the document, particularly the memo—or, rather, the interlineation on page 2 in someone's handwriting and tell us whether or not you know whose handwriting that is?

A. I haven't the slightest idea.

Q. You are positive that you did not prepare the document?

A. I am positive.

Q. Now, Mr. Blake, having made the contract, that is, Organization Service Corporation having made the contract with Rigid Steel Conduit Association, what did you then do in the way of familiarizing yourself with the methods and procedure and merchandising problems of the Rigid Steel Conduit Association?

A. Well, that was some five years ago, Mr. Stewart, and it is rather difficult for me—

Q. Well, give us the best of your recollection.

A. Well, I—whenever I was in contact with any of the individual members of the Association I got as much impression from them as I could as to the state of

2961 affairs in the industry, what were the difficulties

fronting the industry from their merchandising standpoint, all the usual inquiries that you make undertaking work of that character.

Q. Well, now, to what extent did you consider the problem of the method of doing business through the medium of consigned stock contracts? Did you give that serious consideration?

A. I gave it very serious consideration.

Q. What result did you arrive at in your own mind?

Mr. MacIntyre: Now, that is calling for an opinion, and I can't tell from the wording of the question, but it apparently does call for an opinion as to what this man thinks that the problem of the consigned stocks called for in the way of a contract. If it is a statement of an opinion that is called for, I object to it.

Mr. Stewart: As I understand it, this man is charged with being a party to some diabolical conspiracy to do a lot of things, and I certainly have the right to show what he honestly considered and thought about the problems involved as bearing on the question of whether he was acting in good faith.

Trial Examiner Norwood: Read the question.

(Question read by the Reporter.)

Trial Examiner Norwood: That is, about the necessities of the industry?

2962 Mr. Stewart: Of course.

Trial Examiner Norwood: Objection overruled.

Mr. Stewart: Wait until I get the question. Read the question. "Problems" I should have said.

(Previous question and answer read by the Reporter.)

A. Well, it solidified, in my own mind, a very adverse opinion that I have always had in regard to doing business under consignment contracts.

Q. All right.

A. And I found that in suggesting for the consideration of some of the individual members in the industry that that method of doing business had become so fixed that it was like the law of the Medes and the Persians. It could not be changed.

Q. All right. Now, did you or did you not advise the members of the Association to discontinue that method of doing business?

A. I did.

Q. And with the result that you have answered in your previous answer?

A. Yes, sir.

Q. Now, did you go into the problem as to whether or not the methods by which the members of this Association were doing business constituted violations of the Robinson-Patman Act?

2963 A. I did.

Q. And what was your opinion, after having made that investigation?

Mr. MacIntyre: I object. We are now asking for an opinion on the law.

Trial Examiner Norwood: Read the question.

(Question read by the Reporter.)

Mr. Stewart: I should say "and advice".

Trial Examiner Norwood: What was his advice to these respondents after having made that? Well, if you will amend it—

Mr. Stewart: I did.

Trial Examiner Norwood: —I will tell him to answer.

Mr. Stewart: In other words, what his secret thoughts are doesn't make any difference, but I want to know what he actually did.

The Witness: Now, may I have the question as amended?

Trial Examiner Norwood: What was your advice to them after making an investigation in this Robinson-Patman matter?

The Witness: Well—I advised them that if they were going to continue to merchandize their product through the variety of intermediaries that stood between them and the market that they were selling, that they needed

2964 individually to set up very definitely a—some form of control of those intermediaries so that those intermediaries would not, as their agents, bring them into conflict with the provisions of the Robinson-Patman Act.

Q. Now, will you explain what that situation was that you referred to as doing business through intermediaries?

A. Well, I found that these various manufacturers were employing salesmen as their direct salesmen. They were employing commission agents so-called; they were employing manufacturer's agents so-called, technically. They also had created distributor agents chiefly from jobbers and these various types of agencies were selling their product primarily to the contractors, at times to architects, at times to owners, and the manufacturers were

in effect the direct sellers under those circumstances and subject as principals to whatever acts their agents might perform in connection with such sales. Therefore, my advice was that they so handle their individual dealing with their agents that those agents could not bring them afoul of the provisions of the Robinson-Patman Act.

Q. Did you so advise the—

A. I so advised them.

Q. —Association and its membership?

A. I so advised them, yes.

Q. Now, then, did you familiarize yourself with the problems arising out of the specific job contracts?

2965 A. Yes.

Q. What, if any, recommendation did you make with reference to inquiries relating to closed transactions?

A. We set up a regular system of handling inquiries from members of the Association with reference to closed or, as we called them, past transactions.

Q. What if any recommendation did you make with reference to the compilation of tonnage figures?

A. I recommended that they accumulate through reports to be made by the members statistics with reference to shipments of their product, total, so that that might be accumulated into a total in our office, and sent back to each of the members a statement of that total, that they might see what the volume of business being done in the industry was. I think—believe I advocated that they break that down into classifications of product, so far as it was practicable so to do.

Q. Now, what was the reason for that?

A. Well, one of the reasons was that when I was negotiating this contract between Organization Service Corporation and these gentlemen I asked for data as to the volume of business being done in the industry. They made a statement to me, which was their individual opinions collected at that time, as to that volume. Subsequently,

2966 as our contract was based as to compensation on a percentage of the volume of business done, we got a record and the anticipated—or, rather, the statements made to me at the time of the negotiation showed an impression of a volume of business in that industry more than double what it actually was, and, very naturally, my suggestion was that if they were going to conduct their individual businesses with sanity and due re-

gard to the facts in their industry they would have to have those facts.

Q. Now, you spoke of having been over at the technical office on one occasion. Were you aware that there were technical activities being carried on by the Association?

A. I was.

Q. And what if any recommendation did you make with regard to that?

Mr. MacIntyre: I object to going into this witness on anything concerning the technical operations of the Association.

Mr. Stewart: I don't intend to. I just want to show that he recommended—

Mr. MacIntyre: Well, why ask the question?

Mr. Stewart: —that it be continued, as negativing the idea that he was fixing up some scheme.

Trial Examiner Norwood: I think he can tell us this to complete the picture. Overruled.

The Witness: I lost track of the question.

Trial Examiner Norwood: Read the question.

2967 (Question read by the Reporter.)

A. I recommended strongly that they maintain those activities and offered to assist in any way that we were able to from our office.

Q. What if any control did you have over the technical activities?

A. Well, it was definitely understood that I was to give supervision to what was done by the technical office, but, as a matter of fact, we had relatively little to do with the technical work except to assist at times in some of the clerical features.

Q. Now, Mr. Blake, can you recall at the moment any other recommendations you made to the Association as to what—with reference to any new features that you thought were of assistance to them?

A. I don't recall at the moment.

Q. Well, there appears in the minutes of the Association, which are now in evidence, some reference to information on credit standing. What, if anything, did you have to do with that?

A. I recommended that a system of credit reporting be set up, and, if my memory serves me correctly, we prepared forms that we sent to them for that purpose, and that two or three, and possibly more of the members, made

credit reports in connection with those forms, but the
2968 consensus was that there wasn't sufficient requirement for additional credit service over and above what they were receiving from their usual credit information bureaus to warrant that activity, and it was dropped.

Q. Well, now, to what extent did you advise that there should be an approved list of wholesalers or jobbers prepared?

A. I did not advise that there be such a list prepared.

Q. Well, during the time you were connected with the—you or the Organization Service Corporation were connected with the activities of the Rigid Steel Conduit Association, do you know of any approved list of wholesalers or jobbers?

A. There was no such thing?

Q. Would you have permitted that?

A. I would not.

2969 Q. Now, addressing your attention to the subject of the consigned stock form of contract, will you state just what you did in that connection?

A. At the meeting on September 10th that subject of consigned stock or distributor agencies agreement—agent agreement was discussed in a general way, and I was informed that considerable confusion existed in the industry by reason of somewhat a variation in the terms of the consignment agency agreement as employed by the different manufacturers. That confusion grew from the fact
2970 that there was no exclusive agency. Practically every so-called distributor agent or jobber handled the conduit as distributor agent of two to three, four, five, and six producers, and the jobber, therefore, didn't know where he was at. He got himself mixed on what he was to do under the terms of his contract, and I thought it would be advantageous to the industry in general if a more nearly uniform form of consignment agency agreement could be produced; and I was asked if I would draft such a form for a consideration by the individual manufacturers toward that, and I asked them at the time of that meeting to send me the various forms of consignment agency agreement that were being used by the different manufacturers. Practically all of them sent them to me; I went over them very carefully; I, naturally, looked first to see whether or

not they were in actual fact consignment agency agreements or whether they were contracts of sale.

Q. Now, what did you find in that respect—in that regard?

A. I found that they were, in accordance with all the decisions of the courts that I read on that subject at the time, in conformity with the requirements of an agency agreement, with the exception—well, I won't make any exception. They were all agency agreements, as far as I could see.

Q. You mean the contracts you saw?

A. The contracts that I saw. There were—there was one contract which I saw that, in my opinion, was
2971 invalid, void, for illegality, in that it provided for a restriction of the sale of conduit to the one product of the one manufacturer, a violation of Section 3, I think it is, of the Clayton Act, and probably also Section 5 of the Trade Commission Act. I so advised that individual manufacturer, but he thought his attorney knew more than I did about it, and he continued—

Trial Examiner Norwood: Read the original question.

(The Reporter read as follows: "Now, addressing your attention to the subject of the consigned stock form of contract, will you state just what you did in that connection?")

Trial Examiner Norwood: Don't you think he answered that question?

The Witness: Not quite.

Mr. Stewart: Well, I could break it up, but I just thought it was one of those situations—but I am willing to have an adjournment.

Trial Examiner Norwood: Five minutes recess.

(Whereupon a short recess was taken.)

Trial Examiner Norwood: Proceed.

(Previous record read by the Reporter.)

Trial Examiner Norwood: I think he answered that.

By Mr. Stewart:

Q. Well, now, Mr. Blake, I gather from your answer that you found that the consigned stock method of
2972 doing business was in general vogue among the members of the industry when you reached the point of passing upon the matter of revising the forms of contract; is that correct?

A. As far as I could learn, they were all selling on the

consigned agency agreement, with the exception of one company.

Q. And which company was that?

A. The Clayton Mark Company.

Q. Clayton Mark. Now, then, will you explain the mechanics of how you went about arriving at this form of contract which you prepared?

A. Having obtained copies of the various forms of contract being used, I put them into parallel with regard to their succeeding provisions and checked to see what provisions did not appear in all of them, so—and put those provisions out on one side so that when I got through I had accumulated in a rough form all of the provisions that I found in all of the contracts. And I used one contract in particular as being the most embracing of what looked to me to be sound provisions for the purposes of a consignment agency agreement. I added to that such provisions as I found in other contracts that did not appear therein, put them into the correct sequence, that is, my opinion of the correct sequence at least, revised slightly some of the phraseology that was used, in the interest of clarity, and then sent back a draft to all of the manufacturers for their individual consideration, received back from them, a
2973 few of them, suggestions which they had which, in their opinion, would add to the desirability of the contract in its ultimate form. There were three or four drafts at least made, which included these added suggestions, until an ultimate form was finally sent to them. We got in everything I could do with regard to it to accomplish the purpose of a consignment agency agreement. I put myself, tried to, in the position of the manufacturer desiring to sell in that manner, protecting myself to the best of my ability in its form.

Q. Now, to what extent were the individual members left with regard to accepting or rejecting the form of contract which you had prepared?

Mr. MacIntyre: I object. It calls for a conclusion rather than for a statement of facts upon which we could determine and the courts could determine whether or not these people were left free to exercise their independent judgment as to whether they should or should not adopt the form that was handed over to them.

Mr. Stewart: I withdraw the question in that form.

By Mr. Stewart:

Q. What if anything did you do which required the individual manufacturer, from the standpoint of your advice, to adopt your form of contract?

A. Nothing.

2974 Q. Now, I show you Commission's Exhibit 574-A which is a letter of November 30, 1936, for the purpose of refreshing your recollection as to the document therein referred to, which is the form of contract—or, rather, a draft of a form of contract.

A. What is your question with regard to this exhibit?

Trial Examiner Norwood: Read it.

(Thereupon the documents referred to were marked "Respondents' Exhibits Nos. 146-A to F," inclusive, for identification.)

Q. (Continuing.) Will you look at Respondents' Exhibit 146-A to F and state whether or not that is the draft of the contract referred to in 574-A, if you can recall?

A. I couldn't positively identify that as being the specific form that accompanied that particular letter.

Q. All right. Will you state whether or not that is one of the forms which were sent out by your office to the individual manufacturers to enable them to arrive at a determination as to whether or not they would adopt your form of contract?

A. It is.

Mr. Stewart: I am going to offer it in evidence to show that the matter of determining whether or not they should adopt or reject Mr. Blake's form of contract was left to their individual judgments. Ordinarily if it were not,

2975 he certainly wouldn't bother about sending the drafts to them to study them, determine what they wanted to do.

Mr. MacIntyre: Are you offering it?

Mr. Stewart: Yes, I am offering it in evidence.

Mr. MacIntyre: I would like to ask the witness a question or two about it before I know whether I would care to object to it.

Mr. Stewart: You can ask him about the document but nothing else.

Mr. MacIntyre: Yes. It just goes to the document.

Trial Examiner Norwood: Your questions will have to go to the identification of the document only.

Mr. MacIntyre: It goes to the admissibility, as I see it.

Trial Examiner Norwood: Yes. Yes.

Examination on Voir Dire by Mr. MacIntyre.

Q. Do you identify this as the final form—
A. I do not.
Q. —or as the final draft that you sent these people?
A. I do not.
Q. Well, when was it sent to them?
A. This?
Q. This Respondents' Exhibit 146-A to F.

Mr. Stewart: Now, I object to this as only proper
2976 on cross-examination.

Trial Examiner Norwood: He might bring that out, just when this paper was used, yes.

Mr. MacIntyre: It is undated.

Trial Examiner Norwood: Yes.

Mr. Stewart: I don't see how that would affect its admissibility.

Trial Examiner Norwood: Well, it might, I think.

Mr. MacIntyre: What does the—

Trial Examiner Norwood: Answer the question.

Mr. Stewart: He has said that that was one of the drafts which was sent by him to the manufacturers. He can't specify the date.

Mr. MacIntyre: What—

Trial Examiner Norwood: Well, the counsel may make inquiries on that point, yes.

Mr. Stewart: All right.

Mr. MacIntyre: Did he answer that question?

Trial Examiner Norwood: Read the question.

(Previous record read by the Reporter.)

A. Now, I couldn't state the date.

Trial Examiner Norwood: Give us your best recollection on that.

The Witness: I beg your pardon?

Trial Examiner Norwood: Your best recollection
2977 on that.

The Witness: Why, it would be some time about the latter end of November of '36.

By Mr. MacIntyre:

Q. I show you some handwriting that appears on the upper part of the first page, the words "Dec. 8th." Is that your handwriting?
A. No.

Q. Would you say that was approximately the date they were sent out, December 8, '36?

A. I should say not, because I should imagine that the final form accompanied that letter of November 30th.

Q. So this would have been sent out before that?

A. I think so.

Q. And this handwriting in pencil near the top of the first full paragraph below the blanks, is that your handwriting?

A. It is not, no.

Q. Do you know whose handwriting it is?

A. Haven't the slightest idea.

Mr. Stewart: I can tell you whose it is, if you want to know.

Trial Examiner Norwood: You sent this around to all of them and they returned it with criticisms, and so on, and thereafter a final contract was devised; is that right?

The Witness: Yes. Yes.

2978 By Mr. MacIntyre:

Q. And now I show you some handwriting in pencil on the page marked for identification as Respondents' Exhibit 146-C. Is that your handwriting?

A. No, sir.

Q. Do you know whose it is?

A. I haven't any idea.

Q. Do you know whether that handwriting appearing on—that I last called your attention to, which appears on page 146-A and 146-C, was put on this form after you sent it out and before it was returned to you by someone to whom you had sent it in the industry?

A. I should imagine that that was the case, but I couldn't say.

Q. And would that statement also apply as to the penciled notations appearing in the margin of 146-E?

A. Yes, the same thing—

Q. You don't know whose handwriting that is?

A. Haven't any idea.

Trial Examiner Norwood: He wants to know what it is.

Mr. Stewart: I will tell you whose it is if you want to know.

Trial Examiner Norwood: What are those riders on there?

2979 Mr. Stewart: Well, that is the manner in which the document was sent. You see, as the suggested changes were made this thing was put on.

Trial Examiner Norwood: Those riders constitute criticisms?

Mr. Stewart: No. No. It is a suggested paragraph, you see.

Trial Examiner Norwood: I see. Go ahead. Any objection?

Mr. Stewart: Well, I will offer it except as to the pencil memorandum. If Mr. MacIntyre wants that out I can—

Mr. MacIntyre: I would object to it unless they are received as a part of the document—

Mr. Stewart: Oh. That is quite all right.

Mr. MacIntyre: —as a result of the witness' testimony.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBIT NOS. 146-A to 146-F, inclusive, was offered and received in evidence.

Direct Examination by Mr. Stewart (Continued).

Q. Now, Mr. Blake, will you look again at Commission's Exhibit 574-A, the paragraph on page 8—or page 2,
2980 and, having read that, tell us whether or not that refreshes your recollection which will enable you to throw a little more light on when this document, 146-A, was sent out by you? Was it prior to this exhibit or subsequent thereto?

A. Well, this wouldn't help my identification of that particular paper as going out at this time.

Q. I am not asking you that. I am asking you whether or not that enables you to say that this document, which apparently is a rough draft of the proposed form of contract, was sent out prior to the date of Exhibit 574-A?

A. In my opinion, it was.

Q. Now, I call your attention to the reference to the meeting in Pittsburgh on Tuesday, December 8. Do you recall whether or not this final form of contract was submitted to the members at that meeting?

A. The subject was taken up for discussion at that meeting, yes.

Q. Well, since Mr. MacIntyre wants to know about the memo of December 8th on this document, is it likely that that is what the writer had in mind, the meeting of December 8?

A. Very probable.
Q. There was a meeting, was there not?
A. Yes. I say "yes." I assume there was.
Q. Now, this document, 574-A was written by whom?
A. By me.
2981 Q. Now, to what extent, if any did you in preparing the form of contract which has been referred to in this proceeding as the uniform consigned stock contract, alter the method of doing business on a consigned stock basis?
Mr. MacIntyre: I object. That can result in—in fact, it calls for testimony from this witness that is speculative and conclusion in nature, as to how something that he did affected the industry.
Trial Examiner Norwood: Read the question.
Mr. MacIntyre: That is what this case is all about.
Trial Examiner Norwood: Read the question.
Mr. Stewart: All right. I will withdraw it in that form.

By Mr. Stewart:

Q. What did you do finally with reference to preparing the uniform consigned stock contract from the standpoint of its terms? What fundamental change did you make in it?
A. I know—no fundamental change. From a legalistic standpoint it was, to all intents and purposes, in identical form with those that had been used.
Q. Now, I call your attention to Commission's Exhibit 575, which purports to be a letter written by you—or, rather, by Organization Service Corporation containing the signature "Herbert S. Blake." Is that your signature?
A. Well, that is my authorized signature. As a
2982 matter of fact, it was written by my secretary.
Q. Very well. Now, that letter relates to a purchase contract for specific building job?
A. Yes.
(Thereupon a certain document was marked "Respondents' Exhibit Nos. 147-A to 147-E," inclusive, for identification.)
Q. I show you Respondents' Exhibit 147-A to E, ask you to tell us whether or not that is the document referred to in Commission's Exhibit 575?
A. Yes.
Mr. MacIntyre: Do you offer this?
(Discussion off the record.)

Mr. Stewart: I am offering Exhibit 147-A to E as being the document referred to in Commission's Exhibit 575-A, but which was not offered in connection with that letter so as to complete the—

(Discussion off the record.)

Mr. MacIntyre: No objection.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBIT NOS. 147-A to 147-E, inclusive, were offered and received in evidence.

By Mr. Stewart:

Q. Mr. Blake, before we pass on to another sub-
2983 ject, I omitted to ask you as to whether or not you learned at any time as to the number of manufacturers who had adopted your suggested form of contract and the number who had not?

A. I never learned until I checked into that question within the last, oh, 60, 90 days.

2984 By Mr. Stewart:

Q. Now, Mr. Blake, was there any agreement or understanding between you and the respondent manufacturers that your form of consigned stock contract should be adopted by them?

A. No.

Mr. Stewart: There is a standing objection to that?

Mr. MacIntyre: Yes, I do.

By Mr. Stewart:

Q. Now, addressing your attention to the matter of the specific building job contract, you have stated that the document, 147-A to E, inclusive, is a draft which accompanied the Commission's Exhibit 575. Now, what did you do with reference to revising that form of contract?

A. I can best answer you by stating that I did
2985 exactly what I did in drawing the distributor agents' agreement, it was the same—same—

Q. Do you mean by that that the mechanics of the process were the same?

A. Mechanics were the same.

Q. All right. Now, what was there about that form of contract which you deemed it advisable should be corrected or put in different form?

A. To the best of my knowledge and belief, there were no fundamental changes in it. It was merely cumulating

the various provisions and the various contracts that I examined.

Q. Now, what if anything did you do with reference to suggesting changes in the uniform conditions of sale on the various contracts?

A. I did not suggest any new provisions. That was an accumulation of provisions that were furnished to me, being the provisions or conditions of sale as used by the different manufacturers.

Mr. Stewart: Now, off the record.

(Discussion off the record.)

(Thereupon certain documents were marked "Respondents' Exhibit Nos. 148-A to 148-D," inclusive, for identification.)

By Mr. Stewart:

2986 Q. Mr. Blake, I show you Respondents' Exhibit 148-A to D, inclusive, and ask you if that is your letter transmitting an analysis of the various conditions of sale, as you found them on the various contracts of the respective manufacturers?

A. It is.

Q. Now, will you look at the accompanying document and state whether or not that is the analysis made by you?

A. Yes, it is an analysis and a summary of the provisions that appeared on the various conditions of sale as used by the manufacturers on their various sales literature.

Q. Now, the handwriting there is not yours, I take it?

A. It is not.

Mr. Stewart: I offer respondents' Exhibit 148-A to D, inclusive, with or without the pencil memoranda stated thereon, and I will say to Mr. MacIntyre that I know that these memoranda were made by either Mr. J. S. Patterson of Enameled Metals Company, or somebody in that office because I identified part of the handwriting as his, and I think the rest of it probably is Major Quinn's, from the looks of it. So he can have it with or without.

Mr. MacIntyre: I would like to ask a question or two about this.

Trial Examiner Norwood: Go ahead.

Examination on Voir Dire by Mr. MacIntyre.

Q. Mr. Blake, is this list of conditions for condi-
2987 tional sales of—strike that.

Is this a set of conditions you submitted to the various members in the industry for their consideration as to whether they should be included in a sales contract form?

A. No.

Q. Well, what is it?

A. That is an accumulation of all of the conditions of sale that are regularly incorporated on the reverse side, as a rule, of the various pieces of literature, invoices, and one thing and another that the manufacturers of conduit use. They all have just such conditions of sale incorporated on the back of these papers, and I took their various forms and accumulated all the conditions I found, and that is a summary of them.

Q. And sent it to—

A. Sent it out to the manufacturers for their consideration, as to whether or not the accumulated conditions of sale, in their individual judgment, were preferable to the ones they were using.

Q. And returned to you, was it? This sort of document?

A. I couldn't tell you whether any of them were returned to me, with any changes or alterations or not. I do know this: That in regard to those conditions of sale there were no fundamental changes made by me; that—if I may be permitted, to add just to be helpful, you will find
2988 just such conditions of sale—just such, but varying in type according to the industry, on practically all sales documents in all lines of industry.

Q. Why was this sent to them in this form at the time?

A. Because to see whether or not there was, in the combined conditions of sale of all of the manufacturers, features that were desirable to incorporate in their papers.

Mr. MacIntyre: I have no objection to the papers.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBIT NOS. 148-A to 148-D, inclusive, were offered and received in evidence.

Direct Examination by Mr. Stewart (Continued).

Q. Well, what if anything did the various manufacturers do with regard to adopting or following these items, to your knowledge?

A. I haven't the slightest—pardon me.

Q. Well that is all right.

A. I haven't the slightest knowledge.

By Mr. Stewart:

Q. Now, Mr. Blake, with reference to the specific
2989 building job forms and the uniform conditions of sale provisions, what agreement or understanding, if any, was there as between you and the respondent manufacturers as to adopting or rejecting them?

A. There was none.

Q. Well, will you state whether or not that was left to their individual decision?

A. Absolutely.

Mr. MacIntyre: Now, if that answer—that is, question and answer is restricted to whether this man left it to them, I have no objection to it, but if it goes beyond that I do have objection to both the question and the answer and ask that it be stricken, but if it is limited to what he did or what he considered he was doing, of course, that is different.

Trial Examiner Norwood: So far as he knows.

Mr. Stewart: We will clear that while we are at it.

By Mr. Stewart:

Q. That agreement—

Mr. MacIntyre: Well, let us have a ruling on the question. It is on the record now.

Trial Examiner Norwood: There isn't anything for me to rule on. The question and the answer are both in the record, and the question was not objected to. You will
2990 have ample opportunity to clarify the extent of his knowledge on cross-examination.

By Mr. Stewart:

Q. What knowledge, if any, do you have, Mr. Blake, of any agreement or understanding between the individual respondents, outside yourself, with reference to adopting or rejecting these uniform forms?

A. I have no knowledge of any agreement.

Q. Now, directing your attention to the subject to the extent of the activities of Organization Service Corporation, yourself, and Mr. Booth, will you state what brought about your election as president of the Rigid Steel Conduit Association and Mr. Booth's election as secretary of the Association?

A. Yes. Mr. Bennett had acted as chairman of the Association and Mr. Walker as secretary. They both were very busy men, not able to attend all meetings or be at meetings throughout an entire session of the meeting, and it was felt that it would relieve them of that responsibility if we were elected to serve as president and secretary, respectively, of the association.

Q. Now, let me ask you, was there any other reason, other than the one you have given, for your election as president and Mr. Booth's election as secretary of the Rigid Steel Conduit Association?

A. I have no other reason that I could possibly see.

2991 Q. So far as you know, there was no other reason?

A. So far as I know there was no other reason.

Q. Now, directing your attention to the subject of closed transaction inquiries, and calling your attention to Commission's Exhibit 489-A, I ask you whether or not that document is one of the forms which was used in connection with closed transaction inquiries?

A. This is an acknowledgment of the receipt of a request to conduct an inquiry as to a closed transaction.

Q. Yes. Now, what was the practice of your office in preserving the records of its closed transaction inquiries after you had made the report on them to the inquiring member?

A. Any papers that were accumulated in connection with it were destroyed.

Q. And why was that?

A. In the first place, I did not wish to have accumulated in the office what might possibly be interpreted as a record of customer relationships which could be used in any sense in a directional manner in connection with future transactions. Additionally, with the various organizations which we handle, the accumulation of the papers that are incident to the record of that kind takes up quite a lot of space. We don't have that filing space, and rents are pretty high in New York, and we don't rent space for the pur-

2992 pose of keeping what we don't want anyway.

Q. Now, to what extent was the information which you acquired in connection with these closed transactions made available to the membership of the Association generally?

A. It wasn't made available generally. It was made available to the man who inquired, or if someone else had been a party to negotiations in connection with that transaction and making a response requested such information as might be received, we would give him a copy of the record.

Q. Now, did you issue any instructions to Mr. Booth with regard to his duties in connection with inquiries in connection with closed transactions?

A. Yes, very definitely. Mr. Booth had been connected with my office in the capacity of secretary of other organizations and was familiar with the restrictions that I placed upon men who are handling work of that character.

Q. And to what extent was he instructed, if at all, to confine himself to handling closed transaction inquiries?

A. Well, the primary instruction was that he must confine himself absolutely to the transmittal of information on transactions only that were definitely closed.

(Thereupon documents were marked "Respondents' Exhibits Nos. 149, 150, and 151," for identification.)

2993 Q. I show you Respondents' Exhibits 149, 150, and 151, and ask you whether or not you are able to state—strike that out, please. I show you Respondents' Exhibits 149, 150, and 151, and ask you whether you are able to state that in making the reply shown on 149 Mr. Booth was acting in accordance with your instructions?

A. Well, the only letter in here that is written by Mr. Booth, so that it covers—would come within the scope of my instruction, he definitely is within the scope of my instruction.

Q. That is typical of his activities so long as they are in the scope of your instructions; is that correct?

A. Yes.

Mr. Stewart: I am offering the three documents because without the other two you can't understand the transaction, so I am offering in evidence 149, 150, and 151.

Mr. MacIntyre: I offer no objection to Respondents' Exhibit 149, but I certainly object to Respondents' Exhibits 150 and 151, 150 being a tabulation of bids, or at least is claimed to be a tabulation of bids, which apparently was prepared by Mr. C. J. Kim, assistant sales manager

of the National Electric Products Corporation, a respondent here. We do not have Mr. Kim here to ask him about this; we do not have the bids from which they were taken. The two papers are, therefore, incompetent and should not be received in the circumstances and under the conditions that they are offered here.

2994 Mr. Stewart: Well, of course, I am not offering them—

Trial Examiner Norwood: What is the purpose of this 151 and 150?

Mr. Stewart: I am offering those two documents in conjunction with 149 for the purpose of making plain the transaction which is referred to in 149. Without it you won't know what the man is talking about. I am not offering 1—I don't know which one it is that contains the tabulation of the bids—for the purpose of establishing the truth of the facts set forth in that document. But, as I understand it, when you offer correspondence you must offer all of a sequence or none of it. That is my understanding of it. If the document—I mean of the transaction is not explained in the one document, if it refers to other documents, that you must offer them all together.

Trial Examiner Norwood: What is all this offered to show,—

Mr. Stewart: Well, really I have no—

Trial Examiner Norwood: —that this—

Mr. Stewart: —purpose for which it is offered, and Mr. MacIntyre has no objection to the Exhibit 149 which really establishes that fact. We shall contend that Mr. Booth, except where the transaction was in a closed transaction, declined to furnish the information requested.

2995 Mr. MacIntyre: Well, 149 shows what he said and what he expected to do. Why is it necessary, therefore, to have the other two?

Trial Examiner Norwood: I don't see that these others are necessary to show the point that you stated there. 149 will be sufficient.

Mr. Stewart: Very well. Very well.

Trial Examiner Norwood: I sustain the objection as to 150 and 151. Respondents' Exhibit 149 is received in evidence.

RESPONDENTS' EXHIBIT NO. 149 was offered and received in evidence.

2996 (Whereupon at 12:15 p. m. a recess was taken until 1:45 p. m. of the same day.)

2997 Afternoon Session.

1:45 P. M.

Trial Examiner Norwood: Proceed.

HERBERT S. BLAKE thereupon resumed the stand and testified further as follows:

Direct Examination by Mr. Stewart (Continued).

Q. Mr. Blake, have you read the testimony of Mr. Booth, Mr. Bennett, and Mr. Quinn on the subject of the problems and difficulties involved in connection with the specific building contracts? And when I use those terms I refer to the testimony on over-specifying and non-existing buildings and similar subjects.

Mr. Stewart: I am just asking if he read that testimony.

Mr. MacIntyre: I object. It is irrelevant and immaterial as to whether this man is using his time to read the record in this case.

Mr. Stewart: Oh, well,—

Trial Examiner Norwood: Objection overruled. Let him answer.

By Mr. Stewart:

Q. Have you?

A. Yes, I have.

Q. And I believe that you have been in the room 2998 in part during the time Mr. Bennett testified?

A. I was.

Q. Now, in connection with your activities with regard to the specific building contracts, were such conditions brought to your attention as are testified to by those witnesses?

Mr. MacIntyre: Now, I object. It is an improper question. It is vague, indefinite, in the first place, and in the second it is improper in form in that it is a leading question and it is improper in that it is asking him to state his agreement or disagreement or state a modification of someone else's testimony.

Mr. Stewart: All right. In view of the objection, I will withdraw the question.

BLEED THROUGH – POOR COPY

By Mr. Stewart:

Q. Mr. Blake,—

Mr. Stewart: I will be perfectly frank, Mr. Examiner. I was trying to save time, but in view of my friend's—

By Mr. Stewart:

Q. Mr. Blake, will you tell us what conditions were brought to your attention in connection with the specific building contracts? What were the conditions which were brought to your attention during the time you were
2999 acting in the investigation of those matters?

A. That in the matter of specific job contracts that there was a great over-specification of the requirements, the proper requirements for which those contracts are written, which cover a delayed period of construction—

Trial Examiner Norwood: Well, now, you can show that this came to the attention of this witness and that that was the basis of some action of his, and so on, but you have got direct evidence about those conditions, and he can give factual evidence about those conditions if he can give them of his own knowledge. There is no use in enlarging that picture here just by evidence of what they told him.

Mr. Stewart: Very well.

The Witness: Well, if you reduce it, Your Honor, to my own knowledge, I didn't handle the specific detail of investigation of such contracts, so that of my own knowledge I couldn't testify.

By Mr. Stewart:

Q. Very well. Well, let me ask you, then, what was the mechanics of the operation by which the Organization Service Corporation handled the investigation of the specific building job contract?

A. The Organization Service Corporation as such did not handle the field work of the investigation of specific job contracts. It was not equipped nor set up to do
3000 so. Those investigations were handled by outside agencies whose business it was to make investigations of that character for various types of industry, particularly in the building trades. The relationship of Organization Service Corporation to those investigations was, to all intents and purposes, generally speaking, clerical in that Mr. Booth of our office received those contracts

which, in the opinion of the individual manufacturers, should be investigated, and he made such record of them as would enable him from the office to follow up the work that was being done by the investigators. When he got reports back he then sent the contract back to the concern who made the inquiry, together with the report of the investigation.

Q. Now, then, to what extent was the information so acquired made general to the different respondents?

A. The investigation on the individual contract went back solely to the manufacturer who sent that contract for investigation.

Q. And who paid for that service?

A. The manufacturer who requested that. Possibly I should add, to make the record complete as to our relation to it, that the only added feature was that Mr. Booth from time to time compiled a total record of the contracts that had been investigated, the amount of tonnage that was involved, and the results of the investigation as a totality.

3001 Q. I show you the minutes of June 8, 1937, which are in evidence as Commission's Exhibit 19, and an item entitled "Investigation of Contracts," and ask you whether or not that is the type of report which you made up and to which you have just referred in your previous answer.

A. That is the type of report which Mr. Booth made from time to time as to the status of his investigations.

Q. Now, beyond that, and except as to the information which went to the individual manufacturer, about which you have testified, what information did the respondent manufacturers have on the subject of the specific building contract investigation?

A. That is all they had.

Q. Now, in compiling tonnage figures, Mr. Blake, which the record shows was done, will you state what the purpose of that was, the compilation of tonnage figures which—

A. You mean to show total shipments in the—

Q. Well, I will show you—

A. You are referring now to the statistical reports?

Q. Yes. Now, Mr. Blake, directing your attention to Exhibits 498 to 518 which, I think, are inclusive without checking them accurately, will you look at those and state whether or not those are the only types of reports on tonnage which were made to the respondent companies?

A. Yes.

3002 Q. Now, I call your attention to Commission's Exhibit 497 in which you will observe that you have the average price per ton obtained by the industry for conduit shipped in the month of December, the report being dated February 10, 1938, and the figures being for December, 1937. Will you state what the reason for that report was?

A. Well, presumptively it was to show the relativity of the market on both black and white conduit for those two comparative periods of time.

Q. Well, now, wait. You said "presumptively." Don't you know the reason for it? If you don't just say so.

A. Well, that is the reason for it,—

Q. Well, that is what I want.

A. —to show it comparatively.

Q. And of what value is that to the respondent manufacturers?

A. Well, I wouldn't—wouldn't—

Mr. MacIntyre: I object to the answer, as to what value it would be to someone else.

Mr. Stewart: All right.

Mr. MacIntyre: He is speculating on that.

Mr. Stewart: All right.

By Mr. Stewart:

Q. Now, from time to time, Mr. Blake, did you deem it advisable to inform the members of the Rigid Steel Conduit Association as to legal and legislative matters?

3003 A. Yes.

Q. And did you from time to time give them information in writing on those subjects?

A. Yes.

Q. Can you remember, Mr. Blake, all the subjects on which you advised and informed the members as to legal and legislative matters?

A. I cannot.

Q. If I showed you the memorandums which you distributed to them from time to time, would that enable you to refresh your recollection—

A. Yes.

Q. —so as to testify on the subject?

A. Yes.

Mr. MacIntyre: Well, I object to the taking of the time in the hearing room here for the purpose of showing

the witness matters that he has taken up with members of the industry dealing with legislation. It is irrelevant and immaterial to the issues in this case.

Trial Examiner Norwood: Are these matters dealing with legislation, you say?

Mr. Stewart: Well, it would seem to me it wouldn't make any difference what they deal with. They all go to the point that Mr. Blake was acting in entire good faith and endeavoring to keep this Association within the law.

3004 The argument of my friend here, he won't acknowledge it—

Trial Examiner Norwood: Hasn't he already told us about that? These other activities, you know, are not really within the issues but we put them in here so that the respondents may get any advantage of the idea that there were many other useful purposes that these organizations served. That isn't just proving these other things at all but—

Mr. Bozeman: Your Honor please, I think the activities of the Association and of Mr. Blake's corporation over the period in question, that is, all of the activities, really are in issue here.

Trial Examiner Norwood: No. No.

Mr. Bozeman: I submit the complaint does put them in issue by virtue of the fact that it is claimed that a conspiracy arose out of what happened, and the only way of explaining whether a conspiracy did originate is to show everything that occurred.

Trial Examiner Norwood: These other activities would not include the idea of some sort of an agreement or arrangement as to one particular thing.

Mr. Bozeman: Not necessarily, but wouldn't they have a bearing in determining whether or not the conspiracy existed?

Trial Examiner Norwood: We have received this

3005 testimony here to complete this picture.

Mr. Stewart: Well, let us cut it short.

Trial Examiner Norwood: Yes.

By Mr. Stewart:

Q. Mr. Blake, without specifying the particular subjects, will you state to what extent you went in keeping yourself informed as to legal and legislative matters and advising the members of the Rigid Steel Conduit Association on those subjects?

Mr. MacIntyre: I object to that question on the same grounds.

Trial Examiner Norwood: Objection overruled. Go ahead.

A. Why, I did my best to keep up with all pending legislation that bore not only on Association activities, but anything that had relation to manufacturers' interests, and sent out bulletins, sometimes interpretative, sometimes merely stating the facts, not only to the Rigid Conduit, but all of the associations served in our office, put out a general bulletin.

By Mr. Stewart:

Q. Let me ask you, in all of your dealings with the members of the Rigid Steel Conduit Association what was your advice to them as to law observance?

Mr. MacIntyre: I object.

3006 A. As to what?

Q. Law observance.

Mr. MacIntyre: I object.

Trial Examiner Norwood: As to what? Read that question. What was your advice as to what? Law service?

Mr. Stewart: Law observance.

Trial Examiner Norwood: Oh. Objection overruled. He may tell us that. Go ahead.

A. Well, my advice to them very definitely was that the law must be observed.

By Mr. Stewart:

Q. Now, during the period covered by your contract with the Rigid Steel Conduit Association were you absent from the country during any period?

The Witness: State that again.

Mr. Stewart: Read the question.

Trial Examiner Norwood: Read it.

(Question read by the Reporter.)

By Mr. Stewart:

Q. (Continuing.) —during any of that period.

A. Yes. I was absent in the year 1937 on a trip to Europe, from around June 20th to September 8th, or 9th of that year, and again, while my contract was still in existence with the Rigid Steel Conduit Organization but I was not particularly active in connection with its

3007 affairs in any way, shape or form, from January—from about February 2nd, 1939, to the 2nd or 3rd of March.

Q. Now, on the subject of the period during which you rendered services to Rigid Steel Conduit Association under the provisions of the written contract which is now in evidence, will you state how long the Organization Service Corporation rendered the service covered by that contract, the written contract?

A. The contract provided that the service was to—the period of the contract was from two—for two years, dating from the 31st of December, 1936, carrying it up to December 31st, 1938. There was a clause in the contract which automatically continued the contract unless it was cancelled by either party on, I believe, 30 days' notice, and such notice was not given at the expiration of the contract, and so it continued in force until I cancelled the contract as of April 19, 1939. I think it was April 19th.

3014 A. No, sir.

Q. Mr. Blake, yesterday it was suggested, I gathered from the testimony—or, rather, from questions which Mr. MacIntyre asked Mr. Bennett, that prior to the time you entered into this contract with the Rigid Steel Conduit Association that your Organization had been investigated by the Federal Trade Commission. What is the fact with regard to that?

A. That depends on what you mean by "investigated."

Q. Well, I don't know in what sense he used the term, but will you state what if any contact you had had with any representative of the Federal Commission prior to the time you made this contract with the Rigid Steel Conduit Association?

A. Well, that covered a period of nearly 20 years prior, and over that time I presume that I had been called upon by representatives of the Federal Trade Commission possibly 8, 10, 12 times. I wouldn't have called their coming to call upon me investigations.

Q. Why?

A. Because they did not go into—or at any length into anything that had to do with activities of our organization. Most of it was—were what I would call economic questions, and I know that several of these gentlemen from the Federal Trade Commission stated they were from the

Economic Department of the Commission. I do re-
3015 call that there were definite questions asked with regard to the operation of two or three different ones of our organizations but that was some time prior to the Rigid Steel Conduit Association contract and—

Q. Well, now, will you—pardon me. When you use the term "our organizations" to whom are you referring?

A. I mean the trade associations that were being serviced by our office.

Q. Now, it was also suggested that you had been criticized by the Federal Trade Commission prior to that time.

A. I didn't recall that that was the testimony.

Q. All right. What penalties were there, Mr. Blake, that you know of in connection with the specific building contracts?

A. Penalties?

Q. Yes, penalties.

A. If you are speaking of any penalties that had anything to do with association activities, there were none. I presume that it was a penalty to any contractor to have a contract cancelled if he hadn't made his contract in accordance with the terms.

Q. Now, Mr. Blake, again directing your attention to 533-A, assume the general program which is outlined in that exhibit had been submitted to you prior to your entering into the contract between the Organization Service Corporation and Rigid Steel Conduit Association, would you have agreed to those terms?

3016 Mr. MacIntyre: Now, just a moment. May we have the question read, that is, the first part? There were one or two words I didn't get.

Trial Examiner Norwood: Read it.

(Question read by the Reporter.)

Mr. MacIntyre: I object to that question.

Trial Examiner Norwood: Sustained.

By Mr. Stewart:

Q. During the time you were connected with and acting on behalf of the Organization Service Corporation in its contract relationship with Rigid Steel Conduit Association did you or it check all the complaints of the members results of which were to be presented publicly at the next meeting with full information?

A. We did not.

Q. Did you during the same period of time develop standard regulations and charges of deliveries, regardless of location of plant?

A. We did not.

Q. Did you during the period just before mentioned in the previous questions make available to the members of the Rigid Steel Conduit Association any complaint on request of any of the members?

A. No.

Q. Did you recommend to the members of the
3017 Association, either individually or collectively, the proper definition of a jobber?

A. I did not.

Q. Do you recall what if any advice you did give them on the subject of a legal definition of a jobber?

A. I don't recall that the subject ever came up.

Q. Did you or your organization check or cause to be checked all contracts, commitments, and orders as of October 15, 1936, covering price, quantity, length of time to complete job, and when the job started, or when the job is to start?

A. If that refers to the beginning of service on specific job contracts, some features of that may have been incorporated in the setting up of a program for their checking.

Q. Is that the limit to which you want in you activities in connection with the subject covered by the question just asked you?

A. Absolutely.

Q. Did you or your organization, during the period covered by the previous questions, check all the outstanding quotations, other than direct commitments, whether directed by the manufacturer or through his agent or through his jobbers covering price and quantity?

Mr. MacIntyre: I object to the question. It takes in activities of other members of this man's organization about which he might not have been informed directly
3018 and personally at the time.

Trial Examiner Norwood: Read the question.

(Question read by the Reporter.)

Trial Examiner Norwood. Overruled. Answer the question.

A. No, we did not.

By Mr. Stewart:

Q. Did you change the rules of the Association as to the election of directors?

A. I didn't change them.

Q. What if anything did you have to do with the adoption of rules, and having adopted such rules, no changes of standard practice were to be made by any member without notifying the counselor or the counselor notifying the members of the Association?

A. Nothing of that kind was done.

Q. Now, what if anything did you have to do with the subject of other products produced by a manufacturer to the extent that he was not to use that product to effect the price at which his conduit is sold?

A. Nothing to do with it.

Q. Did you ever hear the subject?

A. Yes. I saw it in the consigned agency agreement, that is, two or three different copies that were in there, that provided that a consignment agent, that is, a
3019 distributor agent, was not to sell other products in combination with Rigid Steel conduit at a combination price, and I presume that is what that refers to, but that had nothing to do with any discussion of that subject.

Q. What if anything did you have to do with requiring the manufacturers to agree that their agents would not give any part or—any part of their commission to customers which would thereby result in lowering the price at which the manufacturer's conduit was sold?

A. I had nothing to do with instructing them to that effect.

3038 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on December 12, 1941, the hearing in Docket No. 4452 is now reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., on December 15, 1941.

Please note the appearances.

Mr. Blake will resume the stand.

HERBERT S. BLAKE, resumed the stand and testified further as follows:

Trial Examiner Norwood: Proceed with the examination.

Direct Examination (Resumed) by Mr. Stewart.

3055 Q. (Indicating.) I show you Respondents' Exhibit 153, and ask you if that is the letter you received 3056 from Mr. Sicard's physician?

A. It is.

Mr. Stewart: I offer these in evidence for the purpose of accounting for the absence of Mr. Sicard as a witness (Indicating and handing papers to Mr. MacIntyre).

Mr. MacIntyre: I object to these documents; both of them are irrelevant and immaterial. If for any reason it should be relevant and material for the Respondents to show why a Mr. Sicard is not produced here as a witness, then I would say that Respondents' Exhibit 153 most certainly would be sufficient for such a showing (handing documents to the Trial Examiner).

Trial Examiner Norwood: I do not think they need go in the record as an exhibit; but the statements concerning that are in the record and will be sufficient.

Mr. Stewart: Well, they are obviously offered for the purpose of meeting any possible contention that we have not produced a witness that might have some knowledge.

Trial Examiner Norwood: Yes.

Mr. Stewart: Or whatever inference there might be.

Trial Examiner Norwood: The exhibits are marked for identification, and the counsel may put them in at any time that the matter is questioned.

Mr. Stewart: Very well, sir.

3057 Mr. MacIntyre: Respondents' Exhibit 152, for identification, is objected to as being incompetent, as well as irrelevant and immaterial.

Trial Examiner Norwood: I sustain the objections and they may be presented if any necessity therefor arises hereafter.

Mr. Stewart: Well, as you appreciate, the only purpose was to account for Mr. Sicard's absence.

Trial Examiner Norwood: On the record.

Does that apply to Respondents' Exhibits 152 and 153?

Mr. Stewart: Yes, sir; 152 and 153.

Trial Examiner Norwood: Proceed.

By Mr. Stewart:

Q. Now, Mr. Blake, directing your attention to the subject of the National Electrical Wholesalers Association, state what, if any, contact you had with the National Electrical Wholesalers Association, state what, if any, contact you had with the National Electrical Wholesalers Association, or any of its representatives or officers during the period within which you were connected with the Rigid Steel Conduit Association?

A. I had no contact with them at all.

Q. State what, if any, contact you had with any of the Rigid Steel Conduit committee members of the Na-

3058 tional Electrical Wholesalers Association during the period covered by your connection with the Rigid Steel Conduit Association?

A. I had no contact whatsoever.

Q. Do you know anybody connected with the National Electrical Wholesalers Association?

A. I have a personal acquaintance with Mr. Donald Tolles, who is, I believe, executive secretary of the Association you are referring to.

Q. Did you, during the period you were connected with the Rigid Steel Conduit Association, have any conversations or communications with Mr. Tolles with reference to the affairs of the Rigid Steel Conduit Association, or any of its individual members?

A. Not a word.

Q. State whether or not at the time you—or prior to the time you made your contract with Rigid Steel Conduit Association, you had any information concerning any in-

quiry by representatives of the Federal Trade Commission of officers of the Rigid Steel Conduit Association, on any subject?

A. I had been so informed.

Q. You mean by that you had been informed that there had been such an inquiry?

A. Yes.

Q. I call your attention to the minutes of March 21, 1938, and May 12, 1938, which are in evidence as Com-
3059 mission's Exhibits 29 and 33. I direct your attention to the portion of the minutes which refer to a statement which Mr. Bennett made regarding a communication he had received from Mr. Denton, in connection with an exchange of correspondence he had had with Mr. Laurence W. Davis, general manager of the National Electrical Contractors Association, and your remarks on the subject (handing document to witness).

Will you look at that, please, for the purpose of refreshing your recollection as to the subject only.

A. (Witness examines document.)

Q. Does that refresh your recollection as to the subject?

A. It does, yes.

Q. Will you look at the minutes of May 12, 1938, on the same subject.

A. (Witness examines document.)

Q. Is the same subject mentioned in the minutes of May 12, 1938?

A. Yes.

Q. (Withdrawing exhibit from witness.) That is all right. I just wanted to call your attention to the subject.

State whether or not the correspondence referred to in the minutes of March 21, 1938, was before you at the time you made the statements referred to in the minutes.

A. Yes.

Mr. Stewart: Will you mark these papers for
3060 identification.

(Papers were thereupon marked for identification "Respondents' Exhibit Nos. 154 and 155-A and 155-B and 156.")

By Mr. Stewart:

Q. Now, I show you Respondents' Exhibit 154, and Exhibits 155-A and B, and Respondents' Exhibit 156, and ask you to look at the documents and state whether or not

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those are the documents which were referred to in the minutes of March, 1938, Commission's Exhibit 29 (handing documents to witness).

A. They are.

Mr. Stewart: I offer these exhibits in evidence (Respondents' Exhibits 154, 155-A and B, and 156).

Have you seen them, Mr. MacIntyre?

Mr. MacIntyre: No.

(Mr. Stewart hands documents to Mr. MacIntyre.)

Mr. MacIntyre: Thank you.

Mr. Stewart: I offer these exhibits for two reasons: First, a showing that they were the basis of the statements of the witness on the stand, and, second, that as they are referred to in the written document which was introduced in evidence by the Commission, they are competent for the purpose of showing the entire picture.

3063 By Mr. Stewart:

Q. Referring to the minutes of May 12, 1938, will you look and see whether or not you made reference to another document and brought such document to the attention of the Association (showing minutes to witness)?

A. May? (Witness searches through exhibit.)

Q. May 12, 1938, Commission's Exhibit 33.

A. I did.

Mr. Stewart: Will you mark this for identification.

(The document referred to was marked for identification "Respondents' Exhibit No. 157-A to 157-H.")

3064 By Mr. Stewart:

Q. I show your Respondents' Exhibit 157-A to H, and ask you to look at it and state whether or not the material contained in the exhibit, and referred to on Respondents' Exhibits 157-G, is the data you brought to the attention of the Association as stated in Commission's Exhibit 33 at the bottom of page 3 (indicating)?

A. It is.

Mr. Stewart: I offer that in evidence (handing document to Mr. MacIntyre).

Mr. MacIntyre: I put this document into the same class as Respondents' Exhibits 154 to 156, and object to it on the same grounds that I objected to them.

It is just an effort to put into the record here self-serving incompetent statements made by persons who are not subject to cross-examination.

Trial Examiner Norwood: I shall reserve the ruling until after I read the document.

Mr. Stewart: Well, I might say in answer to that objection that Mr. Davis, who is referred to—who wrote those letters, and who is also familiar with the article in the magazine—will be called as a witness on our behalf.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: That would not make these documents competent. In fact, if he were here on the witness
3065 stand now, the documents are so incompetent he could not even testify, because they are expressions of opinion and speculations.

Trial Examiner Norwood: Well, I shall see how valuable they are.

Mr. MacIntyre: Not proper at all.

Mr. Stewart: Will you mark these for identification.

Trial Examiner Norwood: Mark them.

(Documents were thereupon marked for identification "Respondents' Exhibit No. 158-A to 158-G.")

By Mr. Stewart:

Q. Mr. Blake, I show you Respondents' Exhibit 158-A through G, inclusive, and ask you from whom you obtained that document (showing document to witness)?

A. From Mr. Laurence Davis.

Q. Who is Mr. Laurence Davis?

A. I believe he is styled the managing director of the National Electrical Contractors Association.

3069 Q. Mr. Blake, I show you Respondents' Exhibits 103, 104, 105, and 106, the first of which is a letter from Major Quinn to you, and I ask you to look at the correspondence and state whether or not you are familiar with the subject matter of the correspondence (showing papers to witness).

A. I am.

Q. Will you state what that matter was.

Mr. MacIntyre: Are these papers in evidence?

Mr. Stewart: Yes. I said they were Respondents' Exhibits 103, 104, 105, and 106.

Just to enlighten you, if you recall it, Mr. Examiner, you ruled that I had to follow up the date with Mr. Blake on the correspondence between Major Quinn and Mr. Weir, with reference to the Eastern Electrical Wholesalers' Association. I left that matter incomplete without Mr. Blake's testimony.

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Trial Examiner Norwood: Yes.

Mr. Stewart: And I am now endeavoring to close that gap.

Mr. MacIntyre: I suggest that this is an important type of examination. The witness can be asked what the facts are.

Mr. Stewart: That is a letter to Mr. Blake.

Mr. MacIntyre: It does not matter. There has been no foundation laid to show that this witness needs
3070 anything to refresh his memory or recollection from in order to testify as to the facts that are now sought to be brought out.

Trial Examiner Norwood: Are you asking him for an explanation for that letter?

Mr. Stewart: No.

Trial Examiner Norwood: Or a letter?

Mr. Stewart: I am just calling his attention to the subject matter and asking him what it was. It is a letter to him.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Can't you do that without the letters?

Mr. Stewart: Yes, I can do that without the letters. The letters do not have anything to do with what he is going to say.

Trial Examiner Norwood: I think you might simply state the subject.

Mr. Stewart: Then I will be accused of leading him, I suppose.

By Mr. Stewart:

Q. Go ahead.

Trial Examiner Norwood: Go ahead.

A. Major Quinn sent me the correspondence between himself and Mr. Weir.

3071 By Mr. Stewart:

Q. Who was Mr. Weir?

A. Mr. Weir was, I believe, secretary of the local association of wholesalers in New York, metropolitan area, in which Weir requested the list of distributors of Mr. Quinn's company, and Mr. Quinn asked me to state to Mr. Weir my opinion as to the desirability of filing such a list. I

told Mr. Weir that it could not be done, and that I would not permit the Association members to file lists of their distributors.

Q. With whom?

A. With Mr. Weir, as he requested.

Mr. Stewart: Will you mark these for identification, please.

(A document was thereupon marked for identification "Respondents' Exhibit No. 159.")

By Mr. Stewart:

Q. Mr. Blake, I show you Respondents' Exhibit 159, and ask you whether or not that is a form letter which you sent, as indicated on the document (showing document to witness)?

A. (Witness studies document.)

Mr. Stewart: Will you mark these papers for identification while we are waiting.

(Documents were thereupon marked for identification "Respondents' Exhibits 160, 161, 162-A to 162-I.")

3072 A. It is.

By Mr. Stewart:

Q. And is the document self-explanatory?

A. In my opinion, definitely so.

Mr. Stewart: I offer the document in evidence, Respondents' Exhibit 159 (handing paper to Mr. MacIntyre).

While we are waiting, will you look at these papers to save time, Mr. Blake (showing witness Respondents' Exhibits 160, 161, and 162-A to I).

(The witness examines documents.)

Mr. MacIntyre: No objection to Respondents' Exhibit 159.

Trial Examiner Norwood: It is received as marked.

RESPONDENTS' EXHIBIT NO. 159 was offered and received in evidence.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Go ahead.

I haven't completed the examination of the exhibits.

Go ahead.

By Mr. Stewart:

Q. I show you Respondents' Exhibits 160 and 161, and ask you whether or not those documents were sent out
3073 by the Organization Service Corporation to the members of the Rigid Steel Conduit Association?

A. They were.

Q. (Indicating.) I show you Respondents' Exhibit 162-A to I, and ask you whether or not they show the complete data which was requested of the members in connection with the proposed reporting plan?

A. (Witness examines document.) They do.

Mr. Stewart: I offer these documents in evidence (handing to Mr. MacIntyre Respondents' Exhibits 160, 161, and 162-A to 162-I).

(Mr. MacIntyre examines documents.)

Mr. Stewart: Will you mark these for identification.

Trial Examiner Norwood: Mark them.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 163-A, 163-B, 163-C, and 164-A and 164-B.")

Mr. Stewart: Will you look at those for a few minutes while we are waiting, Mr. Blake (handing to witness Respondents' Exhibits, for identification, 163-A, B, and C, and 164-A and B).

(Witness examines papers.)

Mr. MacIntyre: I would like to ask a question of the witness on this Respondents' Exhibit 162.

3074 Trial Examiner Norwood: Go ahead.

Examination on Voir Dire by Mr. MacIntyre.

Q. Mr. Blake, are these the documents that your office sent out with respect to the reporting plant which had been discussed, and which was subsequently used,—that is, reporting tonnages?

A. Yes.

Q. And specific sales?

A. Yes.

Mr. MacIntyre: No objection to Respondents' Exhibit 162-A to I.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBIT NO. 162-A to 162-I was offered and received in evidence.

Mr. MacIntyre: I have no objection to Respondents' Exhibits 160 and 161.

Trial Examiner Norwood: They are received in evidence.

RESPONDENTS' EXHIBITS NOS. 160 and 161 were offered and received in evidence.

Direct Examination (Continued) by Mr. Stewart.

3075 Q. Now, Mr. Blake, have you familiarized yourself with Respondents' Exhibits 163-A to C?

A. Yes.

Q. Was that document sent out by you to the members of the Rigid Steel Conduit Association?

A. It was.

Mr. Stewart: I offer in evidence Respondents' Exhibit 163-A to C.

Mr. MacIntyre: Respondents' Exhibit 163 is objected to as incompetent, irrelevant, and immaterial; has no bearing on the issues here.

Trial Examiner Norwood: What is the purpose of this?

Mr. Stewart: I don't remember what they were, offhand. Let me see them. (Examining exhibit.)

Oh, well, that is to show that Mr. Blake was acting in entirely good faith, and that he was not using the Robinson-Patman Act, or any other law, as a mere subterfuge.

In other words, it is hard to believe that a lawyer would advise his clients, as Mr. Blake has done in that letter, and that he would at the same time be conniving with them to violate the law.

Mr. MacIntyre: That does not follow at all.

Mr. Stewart: Well, I know it would not follow it to you, Mr. MacIntyre.

3076 Trial Examiner Norwood: Wait a moment.

(The Trial Examiner studies the exhibit.)

I will reserve the ruling on this until I read it.

By Mr. Stewart:

Q. Have you familiarized yourself, Mr. Blake, with Respondents' Exhibit 164-A and B (indicating)?

A. Yes.

Q. Was that document sent out by you or your organization to the members of the Rigid Steel Conduit Association?

A. It was.

Mr. Stewart: I offer it in evidence (handing to Mr. MacIntyre Respondents' Exhibit 164-A and B).

Mr. MacIntyre: Same objection to 164 as to 163 (handing documents to the Trial Examiner).

Trial Examiner Norwood: Yes.

Mr. MacIntyre: They are both part and parcel of each other.

Trial Examiner Norwood: Well, these two exhibits here are to show the character of some of the services of this organization to the manufacturers of the rigid steel conduit?

Mr. Stewart: And to corroborate the contention that Mr. Blake was acting in entirely good faith and in conformity with the law, rather than contrary to the law, as is alleged in the complaint,—Mr. Blake and his organi-
3077 zation, of course.

Trial Examiner Norwood: Go ahead. I will reserve the ruling on that for a while.

By Mr. Stewart:

Q. Mr. Blake, in Commission's Exhibit 621, which is a letter from Mr. Barton to you, I should like to ask you as to whether or not you replied to that letter.

A. I did not.

Q. Why?

A. Well, I considered it merely a friendly compliment on the part of Mr. Barton; did not call for a reply until I should happen to see him personally.

Q. Now, Mr. Williams has testified with regard to a conversation he had with you with regard to the records which were in your office; do you recall the conversation with Mr. Williams?

A. To be perfectly frank, to the best of my memory, I do not recall talking with Mr. Williams. If Mr. Williams testified that he talked with me, why, I am willing, of course, to accept his statement.

I have no recollection of a conversation with him whatsoever.

Q. Well, let me ask, then, what, if any, connection was there between either Mr. Williams or Mr. Frascati's visit to you, and your destruction of records of the Rigid Steel
3078 Conduit Association?

A. Nothing whatsoever.

Q. At the time that Mr. Frascati visited you, did you give him access to any records that he asked for?

A. Mr. Frascati did not ask me for any records. Mr. Frascati lunched with me one day, and he did not refer to any records at all.

Q. Well, then, did you learn in the course of the operations of your office from Mr. Booth and Mr. Frascati had asked him for any records?

A. Yes.

Q. What instructions did you give Mr. Booth?

A. The general instructions that he would have under such circumstances, to let Mr. Frascati have access to any records we had.

Q. Now, what, if any, connection was there between Mr. Frascati's visit to you—well, visits to your office, if there were more than one—and Mr. Williams' visit to your office, and your resignation as president of the Rigid Steel Conduit Association, and the termination of the contract between your organization and Rigid Steel Conduit Association?

A. Oh, it had no relation to it at all.

Q. Mr. Blake, in the Commission's complaint in this case, paragraph 5, you were charged with having entered into a conspiracy, and thereafter engaging in and
3079 carrying out, and still engaging in and carrying out, a wrongful and unlawful understanding, agreement, combination, and conspiracy for the purpose and with the effect of substantially restricting, suppressing, eliminating, and frustrating actual and potential competition as to price, and otherwise, in the sale and distribution of "conduit" in trade and commerce between and among the various States of the United States and in the District of Columbia.

Did you make any of those agreements, understandings, or enter into any such conspiracy, or are you still doing so?

Mr. MacIntyre: This is objected to as improper examination of the witness.

Trial Examiner Norwood: I do not like the practice of reading pleadings to witnesses.

I will sustain the objection.

By Mr. Stewart:

Q. Mr. Blake, what, if any, conspiracy, understanding, or agreement did you and your organization enter into with the Respondents, and by these Respondents I mean not only the Respondent manufacturers but the Respondent whole-

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salers, individually and collectively, with reference to price fixing?

Mr. MacIntyre: I am objecting to this, and I believe I have a standing objection; but this goes a little further, it calls for a conclusion of law, as well as of fact.

3080 Trial Examiner Norwood: You are just permitting him to swear to what he stated in his answer.

Mr. Stewart: I beg your pardon?

Trial Examiner Norwood: You are just wanting him to swear to the statements that were made in his answer, or the Respondents'.

I think that he might do that without any further trouble. The objection is overruled.

A. I made no agreements of any nature or kind, entered into no conspiracy of any nature or kind.

By Mr. Stewart:

Q. Well, what about understandings?

A. Or understandings.

Q. Mr. Blake, the complaint in this case alleges that the Organization Service Corporation and its officers and employees and agents have during the last six years past, aided, assisted, advised, managed, directed, and otherwise cooperated with Respondent conduit sellers in carrying out certain unlawful acts, methods, policies, rules, and practices, as set forth in the complaint in such a manner as to directly and substantially hinder, suppress, and lessen competition among such Respondent conduit sellers who are engaged in commerce.

Now, did you, or, so far as you know, anyone else 3081 on behalf of Organization Service Corporation, ever, in substance, aid, assist, advise, manage, direct, or otherwise cooperate with the Respondents mentioned in the complaint as conduit sellers in carrying out any of the alleged unlawful acts, methods, policies, rules, and practices, as set forth in the complaint, in such a manner as to or with the intent to directly and substantially hinder, suppress, and lessen competition among such conduit sellers?

Mr. MacIntyre: I object to the question as improper.

Trial Examiner Norwood: I think that is a little bit too broad, and you are asking him to swear to really the conclusions there.

Now, while this is a Respondent—

Mr. Stewart: (Interposing.) I beg your pardon?

Trial Examiner Norwood: This is one of the Respondents here, but I will warn him that I want him to swear to

factual matters, and that he will be cross-examined on these conclusions if he adopts them.

With that understanding, I will overrule the objection.

The Witness: I would have to get what your direct question was.

Trial Examiner Norwood: Read it over, Mr. Stewart.

By Mr. Stewart:

Q. Now, did you, or, as far as you know, anyone
3082 on behalf of Organization Service Corporation, aid, assist, advise, manage, direct, or otherwise cooperate with the Respondents mentioned in the complaint as conduit sellers, in carrying out any of the alleged unlawful acts, methods, policies, rules, and practices as set forth in the complaint, in such a manner as to, or with the intent to, directly and substantially hinder, suppress, and lessen competition among such conduit sellers?

Mr. MacIntyre: Objected to as an improper question.

Mr. Welch: Mr. Examiner, I think I would like to explain the purpose of this question, and that is before a ruling, as to whether or not these Respondents, having specifically denied these allegations in the complaint, must also categorically deny them on the stand,—and that is the purpose of this line of questioning.

Trial Examiner Norwood: Why, your denial in your pleadings is not evidence at all; you set forth in your pleadings what you propose to prove, and then that has got to be established by the evidence.

This question is entirely too broad.

Mr. Welch: Well, there is some law with regard to conspiracy that each alleged conspirator must categorically deny the allegations of conspiracy. We don't know whether or not that applies—

Trial Examiner Norwood: I do not think that—

Mr. Welch: —to cases of this kind.

3083 Trial Examiner Norwood: I do not think that it is required,—that the denial of every alleged conspirator is required to defeat the allegation of conspiracy. There are enough of them to disprove the conspiracy.

Mr. Welch: That is the purpose of this question.

Mr. MacIntyre: They have already denied these allegations in their answers; in other words, they have set up issues of fact—

Trial Examiner Norwood: Yes.

Mr. MacIntyre: —through their denials, and it behooves

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them, therefore, to meet the evidence which has been put in in support of the complaint, rather than attempting to corroborate, in so far as they can, from the stand the legal conclusions of their answers, and that is all there is to it.

Trial Examiner Norwood: I shall permit this witness to answer a question, however broad, that relates to the factual matter; but when you are asking him there to swear to the entire complaint, without specifying what parts in the complaint, I think it is time for us to be a little more particular.

I am going to sustain the objection to that question in its present form. He may deny all these things and state that he never has done, or that his organization never has done, —that is, to his knowledge,—even done any of those things; he may do that,—but if you are asking him to swear
3084 that he had never done anything alleged in the complaint, I think that is too broad.

Mr. Stewart: I agree.

Will you read the Examiner's remarks, Miss Reporter.

Trial Examiner Norwood: Read it.

(Statement by the Trial Examiner read.)

Mr. Stewart: Will you give me just a moment?

Trial Examiner Norwood: Yes.

By Mr. Stewart:

Q. Mr. Blake, what, if anything, did the Organization Service Corporation, its officers and employees, do, in aiding, assisting, advising, managing, directly and otherwise, in cooperating with the Respondent conduit sellers, in carrying out any of the alleged unlawful acts, methods, policies, rules and practices, during the period between 1936 and 1939, when your organization was connected with the affairs of the Rigid Steel Conduit Association?

Mr. MacIntyre: I object to that question as an improper one in form.

Trial Examiner Norwood: The objection is sustained.

You are asking him to pass upon what is lawful and what is unlawful.

3085 Mr. Stewart: I think I am through on direct, but I suggest that we adjourn now until 1:30, and I can be definite; but I am pretty well satisfied that when we return we will be ready for cross-examination.

Trial Examiner Norwood: Recess until 1:30.

(Whereupon, at 12 o'clock noon, a recess was taken until 1:30 o'clock p. m. of the same day.)

3086 **Afternoon Session.**

1:30 P. M.

Trial Examiner Norwood: The hearing will come to order.

HERBERT S. BLAKE resumed the stand and testified further as follows:

Trial Examiner Norwood: With respect to the pending proffers of Respondents' Exhibits, for identification, 154, 155-A & B, 156, 163-A to C, inclusive, 164-A and B, I shall overrule the objections and receive these exhibits for the purpose of explaining the actions of this witness and these Respondents, but would state that they will not be considered to prove the truth of these statements that are contained therein, but to show what came to their knowledge, generally, that complaints were made, and so forth.

Mr. MacIntyre: Or that any of the situation that is referred to there actually existed? Because they purport to be statements of facts by parties not here.

Trial Examiner Norwood: If not otherwise shown. It shows the setting in which they acted.

Mr. Stewart: Now, will you stipulate that a complaint was filed with the Commission, Mr. MacIntyre?

Mr. MacIntyre: I do not know anything about the facts on that, Mr. Stewart.

Mr. Stewart: Well, will you investigate before we
3087 close this hearing and advise me as to whether you will stipulate?

Mr. MacIntyre: You mean as to whether an application for complaint was filed?

Mr. Stewart: Well, this document, or the original of this document, Exhibit 158-A to F, inclusive, according to our information was filed with the Commission, and G is the memorandum of the Commission on the subject. Otherwise we will have to call Mr. Davis to prove the fact that it was filed.

Mr. MacIntyre: If you can get a statement from the Commission, it is certainly all right with me, but I am under statutory requirement and under the rules of the

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Commission not to divulge that a complaint was filed by anyone or who the person is who had filed it, so naturally I could not do that.

Trial Examiner Norwood: It is only when the complaint is filed that the matter becomes public.

Mr. Stewart: Very well.

Trial Examiner Norwood: But I shall not receive 157 and 158 at this time, and we will proceed until either one of them is necessary.

RESPONDENTS' EXHIBITS NOS. 154, 155-A
3088 and 155-B, 156, 163-A to 163-C, and 164-A and 164-B were offered and received in evidence.

Mr. Stewart: I have one more matter.

At this point, simply as a matter of keeping the continuity more than anything, I offer in evidence by reference thereto the material contained in the 25th Annual Report of the Secretary of Commerce for the fiscal year ended June 30, 1937, pages I to IX, inclusive, and I offer in evidence the 26th Annual Report of the Secretary of Commerce for the fiscal year ended June 30, 1938, pages I to X, inclusive.

Do you want to see these, Mr. MacIntyre?

That is, of course, Mr. Examiner, on the theory that the Commission would take judicial notice of it, but I am just calling attention to the material as a matter of convenience.

Trial Examiner Norwood: Yes.

Off the record.

(Discussion off the record.)

Mr. Stewart: Mark these for identification.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 165-A to 165-I, and 166-A to 166-J.")

Mr. MacIntyre: May I see those pages?

Mr. Stewart: Yes (handing the documents to Mr. MacIntyre).

I offer the documents, Exhibits 165 and 166, in evi-
3089 dence.

3090 RESPONDENTS' EXHIBITS NOS. 165-A to 165-I, and 166-A to 165-J were offered and received in evidence.

Mr. Stewart: I am through, Mr. Examiner, but I understand Mr. Austin would like to ask a question.

3091 Mr. Austin: Just one question.

Direct Examination (Continued) by Mr. Austin.

Q. Mr. Blake, you testified yesterday that you attended a meeting at the Biltmore on January 7.

A. Yes.

Q. In 1937, and that at that time you were presented to some jobbers who were present in bloc—I think that was your language.

I would like to ask you if any representation was made to you that the jobbers present were members or representatives of any electrical wholesaling association.

A. There was no such representation.

Mr. Austin: That is all.

Mr. Stewart: Cross-examine.

Trial Examiner Norwood: Cross-examine him.

Cross-Examination by Mr. MacIntyre.

Q. This morning you testified, Mr. Blake, that pipe manufacturers were discriminating in price.

A. Yes.

Q. Where did you learn that?

A. I learned it from the statements of three or four of the manufacturers of conduit.

Q. In other words, these Respondents here told 3092 you that somebody else was discriminating in price?

A. Yes.

Q. Did they tell you whether or not that that discrimination was based on a use of a basing-point system of pricing in the sale of steel pipe in which Pittsburgh, Lorain, Ohio, and Chicago, Ill., were used as basing points?

A. Nothing of that kind was stated to me.

Q. They did not tell you that?

A. No.

Q. Who told you this?

A. Who told me this?

Q. Yes.

A. Mr. Bennett, Mr. Quinn. I do not recall anyone else.

Q. Did you verify those statements to determine whether or not they were true?

A. Yes, I did.

Q. In what way?

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A. I talked with a representative of one of the pipe companies that was not, also a manufacturer of conduit, and asked him a few questions with reference to his sales policy and what he knew of the sales policies of other manufacturers of pipe.

Q. He told you some things about his sales policy and what he knew about others?

A. I beg your pardon?

3093 Q. And he told you about his sales policy and something that he knew about others?

A. Yes.

Q. Did you verify that in any other way in addition to having been told some things?

A. I followed my talk with him—I had a telephone conversation with the general sales manager of another one of the manufacturers of pipe, and he told me approximately the same thing.

Q. Did you verify it in any other way other than having these two gentlemen tell you something?

A. No.

Mr. MacIntyre: If Your Honor please, then, I move that all of what this witness testified to this morning concerning discrimination in the sale of pipe by conduit manufacturers be stricken from the record. He has demonstrated that he had no knowledge.

Trial Examiner Norwood: I think that testimony was received merely to show this witness' state of mind and his reasons for the action which he took.

Mr. Stewart: Exactly.

Trial Examiner Norwood: And I will allow your motion so far as limiting the consideration to the purposes I have just stated. It is not to prove that there was price discrimination among the manufacturers of raw pipe.

3094 Mr. MacIntyre: In other words, to be taken as being the testimony of this witness on statements made to him by other Respondents and two other parties without verification or without any basis for the truth of them.

Trial Examiner Norwood: That is right.

Go ahead.

By Mr. MacIntyre:

Q. Have you made any inquiry, Mr. Blake, by way of investigation of facts which you have ascertained, what pricing system is used by the steel industry?

A. No, I have not.

Q. Do you know whether or not in the steel industry the steel manufacturers and sellers use a basing-point method of pricing their goods?

A. I have that as a matter of general knowledge that I imagine anybody that has had any contact with the steel industry has.

Q. You made no direct investigation yourself?

A. None whatsoever.

Q. So the statements that were at the bottom of the page, Commission's Exhibit 576-D, which were called to your attention this morning, about the steel industry, were all based on hearsay; that is, the testimony you gave in connection with those this morning was all based on hearsay. Is that correct?

3095 A. I do not recall that anything in that letter related to basing points or anything in connection with them.

Q. Well, what did you state at the bottom of the page that I just called your attention to that is based on your investigation of the steel industry?

A. May I see the particular portion of the page that you are referring to? I think maybe I can answer you more intelligently.

Q. The last paragraph (handing a document to the witness).

A. I don't see that that paragraph has anything to do with the question of basing points or any pricing based on basing points. What is the—

Q. What did you learn about the steel industry—strike that.

How did you learn anything about the steel industry upon which any statements concerning it which you made in that paragraph are based?

A. Just as I previously testified, that in talking with these two men who were interested in the sale of pipe that there were—that they did have a very natural interest in the stability of the market into which their product was being projected.

Q. And Major Quinn and Mr. Bennett, as conduit manufacturers, also discussed that with you?

A. Yes. I got the whole basis of what I state here

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from the discussion I had with Mr. Bennett, Mr.
3096 Quinn, as individuals, and Mr.—and the gentlemen that were acting as sales managers of the two pipe companies.

Q. And who were those two gentlemen?

A. Mr. Walter Weewil was the man I talked with of the Jones & Laughlin Company, and I can't remember the name of the man who is the sales manager of the Wheeling Steel Company.

Q. Have you developed all of your activities in which you have carried on certain work for members of the Rigid Steel Conduit Industry without any discussion with them in a group?

Mr. Stewart: What was that? Have you?

Mr. MacIntyre: Yes.

The Witness: I don't get the purport of your question.

Trial Examiner Norwood: Read it.

Mr. Stewart: I don't, either.

Trial Examiner Norwood: Read it.

(Question read.)

A. If you mean that there were developed—any of my activities were developed as a result of group discussion, group instruction, I can say no, that there were no such discussions.

By Mr. MacIntyre:

Q. I will ask the question again, Mr. Blake: Is it your testimony that you have not undertaken activities on the behalf of members of the Rigid Steel Conduit Indus-
3097 try as a result of any discussion that you have had with them in groups?

A. No, that is not my testimony.

Trial Examiner Norwood: Well, what is your testimony on that point?

The Witness: I have discussed with them the general features that were the basis or foundation for suggestions or recommendations which I made.

By Mr. MacIntyre:

Q. And they included the development of a consignment stock agreement form?

A. Just as I previously testified on direct, I gained the impression from discussion had with the gentlemen in the meeting on the 10th of September, 1936, of the desir-

ability of getting more uniformity into the form of consignment agency agreement that was used in the industry.

Q. Well, then, what did you mean this morning when you told Mr. Stewart that you knew of no discussions which had any relation whatever to do with uniformity in any contracts or business practices?

A. I—before answering that I would like to know just what it was I testified to. I don't recall testifying—

Mr. Stewart: I think I put "agreements" in that question.

A. (Continuing.) I think it was a matter of
3098 agreement being projected in Mr. Stewart's question, not "discussion."

Q. His question was "agreements or discussions." Now, do you want to limit that testimony that you gave to him this morning by saying that you did not give it—you did not intend to give it unless it also had attached to it in the question "agreements"?

A. Right.

Q. And would be conjunctive rather than disjunctive in connection with agreements; is that correct? Is that what you want your testimony to now be taken as meaning?

The Witness: Will you please state that again?

Mr. MacIntyre: Read the question.

Trial Examiner Norwood: Read it.

(Question read.)

A. I don't understand that question.

By Mr. MacIntyre:

Q. Mr. Stewart asked you if there were any agreements or discussions concerning this sort of a thing, that is, uniformity in contracts and certain practices. Do you want your testimony now limited—to be taken as being limited to agreements, that is, as not referring to agreement, but you want it to be taken as an admission that you did have discussions on such practices?

A. I had discussion with them as to various features of the merchandising program in the industry with a
3099 view to giving them suggestions for such improvement as I could; had nothing to do with agreement. There were such discussions.

Q. You don't want any testimony that you gave to Mr. Stewart this morning to be taken as meaning that there were no such discussions?

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A. No.

Q. Is it your testimony, Mr. Blake, that there has been no exchanging of price cards between and among these Respondent Rigid Steel Conduit manufacturers?

A. I didn't testify to that.

Q. Well, do you know whether or not there has been an exchange and reporting between and among them of price cards?

A. I do not of my own knowledge, no.

Q. Do you want your testimony to be taken as indicating that no such took place?

A. I—it is impossible for me to state what others may have done. I have only testified as to what was done through and by my office. I have no knowledge of what may have taken place as between the manufacturers.

Q. You wanted your testimony this morning, then, to be limited to—that is, as to activities in that direction to what took place through your office; is that correct?

A. Absolutely.

Q. You do not deny, do you, Mr. Blake, that you discontinued your activities with the Rigid Steel Con-
3100 duit Association a few months after Mr. Williams and Mr. Frascati visited you and investigated your activities in connection with this case?

A. If you are intending by that question to infer that there was any tie-in between my resignation and their visits, I do deny it, but I do not deny that I did resign and cancel my contract with the Rigid Steel Conduit Association prior to Mr. Williams' call at my office, if his statement as to his date is correct, and about two years or a year and a half after Mr. Frascati called.

Q. You do not deny that it came after Mr. Frascati's call on you?

A. No, I do not deny it. It is a matter of record.

Q. What trade association activities were prohibited by the Supreme Court opinion in American Hardwood Col-
umn & Lumber case?

3101 A. I do not recall. I read the case in the past, but I do not recall specifically today.

By Mr. MacIntyre:

Q. Will you please tell us what the lower court in the *Sugar Institute case* v. *U. S.*, 209 U. S. 553, prohibited with respect to the use of a basing-point system and the compilation of freight rates in connection therewith?

Mr. Houston: I object on account of the lower court's opinion isn't material, Your Honor. We are looking at Supreme Court opinions.

Trial Examiner Norwood: We are admitting this 3102 to test this witness' knowledge, his ability to advise his clients on trade matters. I think that he is getting rather remote, though.

You may answer that question.

A. I never advised with these clients—or advised these clients in connection with anything that was related with freight, never discussed the subject, don't know anything about it, and even if I could recall the decision of the lower court, that part of the court's opinion wouldn't have had—made any impression on my mind.

By Mr. MacIntyre:

Q. Do you know whether or not that the Supreme Court of the United States upheld the lower court on that particular point?

A. I do not.

Q. Will you please tell us, Mr. Blake, what trade association activities were prohibited by the Supreme Court of the United States in its opinion and decision in the American Linseed Oil case, 262 U. S. 371?

A. The American Linseed Oil case I know in a general way just the same as I do that of the American Hardwood Column case, but I can't recall the specific features that were prohibited by the decision of the court.

Q. Have you ever made a study, in connection with your handling of trade association work, the submis- 3103 sion to the United States Government in bids under seal, identical and uniform bids, by number of bidders at any given time?

A. Personally, I have not.

Q. Have you ever inquired as to the reasons why those things were done?

A. What things were done?

Q. The submission of such uniform bids?

A. I have not.

Q. Isn't it a fact, Mr. Blake, that you advised these Respondents here that functional discounts under the Robinson-Patman Act, irrespective of costs, were legal?

A. I—your question is if I advised them that functional discounts, irrespective of costs—

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Q. Of the seller in doing business with the different people.

A. Were legal?

Q. Yes.

Mr. Stewart: Now, wait a minute, Mr. Blake.

I insist, if the question is going to be broken up that way, that it be asked so that you understand what it is.

Trial Examiner Norwood: Do you understand the question?

Mr. Stewart: Will you ask the question again, Mr.—

Trial Examiner Norwood: Wait a minute.

Do you understand the question?

3104 The Witness: I believe I do, yes.

Trial Examiner Norwood: I think he may answer.

The Witness: I believe I do.

A. Yes, that would have been my advice to them.

By Mr. MacIntyre:

Q. In other words, your advice has been to these people that if you take "A" as a wholesaler and "B" as a consumer, and with "A" buying five carloads of conduit in an order for a single delivery, and "B" buying five carloads of conduit for delivery in a single order, that if "A," being a wholesaler, stocks goods and "B," as a consumer, does not stock goods, that irrespective of the fact that the seller of those two orders sustained no different cost in servicing one of the customers as against another, that the Robinson-Patman Act would permit differentials in price of a functional nature?

A. That is my opinion from a study of the Act.

Q. And that has been your advice to the Respondents in this case?

A. I had no reason to give them that advice, that I know of, because I don't believe the question ever arose.

Q. Isn't that what you gave them in the form of advice when you told them that this wholesaler-contractor problem was to be handled in such a way that the contractor, irrespective of quantities, and irrespective of costs,

3105 should not be sold on the same price level as the wholesaler?

A. No, that isn't what I told them.

Q. Well, what did you tell them about that?

A. I told them this: That where a manufacturer was selling through a distributor agent under a consignment

agency agreement, that he must not sell the contractor on the basis of the net price that would be represented by the payment of the commission to the consignment agent; that the sale was being made by the manufacturer direct to the contractor. The sale was to the contractor, not to the jobber, so-called in that instance; and that if he did sell to a contractor on the basis of his being a distributor agent and did not sell a competing contractor who was also his customer on that basis, he was discriminating.

Q. Is it your testimony that you have never told these Respondents that they would be discriminating in price even though they sold a contractor the same quantity at the same price as they sold a wholesaler rigid steel conduit?

A. If it was a sale in each case, I said nothing about it, because that had nothing to do with my advice.

Q. Or is it your testimony that you have never given such advice?

A. I never gave them advice in connection with that point.

Trial Examiner Norwood: Read the last question.

(Question read.)

3106 By Mr. MacIntyre:

Q. Is it your testimony that you have never given any advice to these Respondents that they could not sell any contractor of rigid steel conduit on an agency basis without discriminating against other contractors—

Mr. Stewart: Now, what—

Q. —whether such seller sold the other contractors or not?

A. No.

Q. Well, then, I show you, Mr. Blake,—

Mr. Stewart: Wait a minute.

Q. —your letter, Commission's Exhibit 538-A and B, and ask you to tell us just what you meant by the paragraph numbered 1 if you didn't mean just what I asked in this last question?

A. Well, I mean just exactly what I say in the statement that I made, that a manufacturer might not sell an electrical contractor as a distributing agent, and on an agency basis without resulting in discrimination against other competing electrical contractors.

Mr. Stewart: You leave that out of your question every time.

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Q. If he sold the other contractors at the same price, even though he sold one on an agency basis, it would not be discrimination, would it?

A. If he didn't give the same agency basis to the other contractors it would.

3107 Q. The mere fact that he gives one an agency basis and doesn't give it to the others result in discrimination, even though they all pay him the same price? Is that what you say?

A. But I don't say that. If there are four contractors, say, in a given town that are buying from a distributor agent and buying the same conduit of the same make, and the agent gives contractor A here a price based on an agency basis of discount, and does not give it to the other three who are competing and are customers of his, he is discriminating against the other three.

Q. But does it make any difference whether the agent is a wholesaler or contractor?

A. Does it make any difference if what?

Q. If the so-called agent is a wholesaler or a contractor?

A. Or a contractor?

Q. Yes.

A. The question is somewhat involved. The point is that if an agent also is acting as a contractor—is that what you mean?

Mr. MacIntyre: I don't think that is my question. Read the question again.

(Question read.)

A. You will have to clarify that question before I could answer it intelligently.

3108 Q. Well, you have told us that if he sold the contractor as an agent, that is, set one up as an agent and sold him on an agency basis and didn't elect to make all the other contractors his agent at the same time, that he would be discriminating in the favor of the contractor agent; isn't that what you said?

Mr. Stewart: I object to the question in its form as not being a correct statement of the testimony of the witness.

Trial Examiner Norwood: Read the question.

(Question read.)

A. Yes.

Trial Examiner Norwood: Yes. I think—

By Mr. MacIntyre:

Q. Well, now, I am assuming another set of facts: That his agent is a wholesaler instead of a contractor; he sells him on the same basis as an agent as he would have sold him if he had been a contractor. Now, is he discriminating, as you see it?

A. I am trying my best to follow you, Mr. MacIntyre, but I am having a great deal of difficulty because nomenclature has a great deal to do with it.

Trial Examiner Norwood: Suppose he sells a wholesaler at the contractor price. Is that what you are talking about? And then sells the contractor at the con-
3109 tractor price; is that discriminating?

The Witness: Well, he certainly wouldn't be discriminating.

By Mr. MacIntyre:

Q. Well, suppose he sells a wholesaler at a wholesaler's price and a contractor at a contractor's price, which is higher than the wholesaler's price; is he discriminating then in price?

A. No, not if he is making an actual sale to a wholesaler at a wholesaler's price and the wholesaler is the buyer, and he is going to sell that in consequence as a resale to a contractor, it doesn't make any difference what price he has sold the contractor at. You have got another step that is projected into it.

Q. Well, now, let us assume—

A. I am talking about the matter of discrimination on the part of the manufacturers through their various selling factors, f-a-c-t-o-r-s, and that is all that I can testify to.

Q. All right.

Now, let us assume that the wholesaler is W—

Mr. Stewart: Is what?

Mr. MacIntyre: W.

Mr. Stewart: Double?

Mr. MacIntyre: W.

Mr. Stewart: I thought you said was double.

3110 Mr. MacIntyre: W.

By Mr. MacIntyre:

Q. (Continuing) —he buys from the manufacturer M at $5.75; the contractor, however, is unable to buy for any price less than $6 the goods of like quality and quan-

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tity. Has there been discrimination on the part of the manufacturer in making those two sales?

A. Not if he is making an outright sale to a jobber as such.

Q. Now, using in the ordinary sense of the word the term "secondary," applying it to a market, how do you use it, what is your definition of it?

A. Secondary market, to my—in my vocabulary, is the man who purchases from the primary seller.

Q. And will you please give us your definition that you usually attach to the word "primary," when you use it to describe a primary market?

A. Just—the primary market is the manufacturer, the first seller of any item in the form in which it is sold.

Q. Then, do we correctly understand your testimony to mean that a primary market is the one in which the manufacturer makes his sale to his customer?

A. No. He is—he represents—his is the primary market, the market that might exist among manufacturers in the sale of given products. The secondary market would be the market, the collective group that buy that prod-
3111 uct from the manufacturers.

Trial Examiner Norwood: You mean the wholesalers; do you?

The Witness: It might be the wholesaler; it might be the user, if they sold directly to him; whomsoever is the ultimate purchaser.

By Mr. MacIntyre:

Q. If you have only got the manufacturer and his customers as parties involved in a market, do you have more than one market, Mr. Blake?

A. What do you mean, in conduit?

Q. Yes.

A. Well, you can have. If a manufacturer sells to the jobber and makes an outright sale to the jobber, the stock belongs to the jobber when it goes into his warehouse, he is the owner of it, and he again sells it to a contractor you would have three separate markets there.

Q. What would be the third one?

A. The third one, the tertiary market.

Q. And where is the secondary market there?

A. The jobber, under those circumstances.

Q. Between his customer and—

A. That is the—that is the normal—that is the normal method of distribution of merchandise.

Q. And the secondary market is that one existing between the wholesaler and his customer?

3112 A. No. His is the secondary market in which I, as a manufacturer, am selling.

Q. In order to have a market you must have a buyer and a seller and some transaction between them. Now, is your secondary market one between the wholesaler and his customers?

A. No.

Q. Where is it?

A. Can I digress enough to give you a little merchandising information? Ordinarily—

Q. I would like for you to answer the question—

Trial Examiner Norwood: Answer the question.

Q. —as to where this secondary market is.

A. I can't answer the question unless we are talking about the same thing.

Mr. Stewart: Well, I doubt if they are, so I think that possibly—

Trial Examiner Norwood: I think he can answer that question.

Read the question.

(Question read.)

Trial Examiner Norwood: Where is it? Where is the secondary market?

The Witness: The secondary market is the first sale that a manufacturer consummates.

By Mr. MacIntyre:

3113 Q. Where is the primary market?

A. The manufacturer himself represents the primary market.

Q. You mean in his purchases of something from someone?

A. No.

Q. For the sale of something to someone?

A. What he is selling at represents the primary condition of the primary market.

Q. Oh, I see.

You looking at the same market, looking at it from the manufacturer's viewpoint, you say it is primary?

A. Yes.

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Q. If you look at the same market, then, from the viewpoint of the buyer it is secondary?

A. That's it.

Q. The same transaction. Is that correct? Looking at it from a different viewpoint.

Trial Examiner Norwood: Is that right?

Q. Is that correct?

A. The seller represents the primary market. The buyer represents the secondary market.

Q. Well, let us get this straight. Take a transaction between a manufacturer and his customer.

A. Yes.

Q. And looking at that transaction from the manufacturer's viewpoint, it is the primary market; is that correct?

3114 A. That is, the customer represents the primary market?

Mr. MacIntyre: Read the question.

Trial Examiner Norwood: Read it.

(Question read.)

A. No.

By Mr. MacIntyre:

Q. What is it?

A. The secondary market.

Q. Well, take that transaction, and where will you find the secondary market?

A. With the buyer. The buyer represents the secondary market, the man who has taken and paid for that merchandise.

Q. All right. Let us assume that transaction again. Take a transaction from the seller, the manufacturer. Now, where is the primary market with respect to that transaction from the manufacturer's viewpoint?

A. The manufacturer's view— I can't follow you. I am trying to tell you that in the general parlance of industry a primary market is the market which is represented by the position that is being taken by the seller, the first seller. The secondary market is the market in which he sells that product. And if it is resold, it is a tertiary market.

Q. In other words, the primary market—

Trial Examiner Norwood: What is a market?

The Witness: A market represents the general
3115 status of a product offered for sale as to price and all the other correlated features which enter into a market. You speak of what is the stock market, which is the same thing. It is, What is the market? The market represents the offering for sale of a product and what it is offered at.

By Mr. MacIntyre:

Q. Now, you have told us—

Trial Examiner Norwood: You think that "market" is the same thing as "market price"?

The Witness: Well, generally speaking, it represents the market, yes.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Now, you have told us that a manufacturer in making a sale in a particular transaction, looking at that transaction from his viewpoint, that is the primary market. Now, I will ask you if taking that same transaction and looking at it from the seller's viewpoint, what is that—I mean the buyer's viewpoint, what is that?

Mr. Stewart: What is what?

Q. Is that the secondary market?

A. Well, I don't know what the buyer's viewpoint would be. I know that in my nomenclature I would call that the secondary market.

Q. On the same transaction which is looked upon
3116 as the primary market from the seller's viewpoint; is that correct?

A. Yes.

Q. All in the same transaction?

A. Yes.

Q. And any discrimination in price under the Robinson-Patman Act in a primary or secondary market, as you have defined them, would be taking place in such markets; is that correct?

A. Yes.

Q. In other words, if someone told you that there was no discrimination in the primary market, but there was one in the secondary market, under the Robinson-Patman Act, means that there would be no discrimination on the part of the seller there, but there would be on the part of the buyer in buying; is that correct?

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A. No.
Mr. Stewart: Well, now—
The Witness: That is not correct.

By Mr. MacIntyre:

Q. Where would you get your discrimination in a secondary market and not have it in the primary market, under the Robinson-Patman Act, using the definitions for those terms that you have just given.

A. If you had no buyer you would not have any discrimination, that is a certainty, and the discrimination would take place when the seller discriminated between the buyers.

3117 Q. But could you have any discrimination under the Robinson-Patman Act in the primary market without also discriminating in the secondary market, or having discriminations result from the secondary market?

A. Why, you would have to tie the two together to produce discrimination.

Q. In other words, you could not have one without the other; is that correct?

A. Why, certainly not. You would have to have a buyer and a seller.

Q. You can't have discrimination, then, under the Robinson-Patman Act in a primary market without also having it in the secondary market; is that correct?

A. In my use of the terms "primary" and "secondary."

Q. Well, is that correct?

A. Yes.

Trial Examiner Norwood: We will have a five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Mr. Blake, do you recall having used in any of your writings, that is, communications to any of the Respondents in this conduit case, or for that matter, anyone for whom you were working when you were handling the Rigid
3118 Steel Conduit Association work, the term "tertiary" market?

A. No. No, I do not believe so.

Q. Did you give any consideration at all to whether or not that any of these manufacturers in sales made by their agents at prices dictated by the manufacturers to consumers

or contractors were discriminating in prices in this tertiary market which you contend exists?

A. Normally a tertiary market did not exist in the conduit industry, as these jobbers so-called were selling as the agents; they were consequently the manufac—the manufacturer was the direct seller, and the contractor was the buyer, and there was only the one transaction.

Q. The secondary market in that case was between the contractor and the manufacturer's agent—is that correct?

A. Manufacturer, yes, through his agent.

Q. That is, the wholesaler who was—

A. Acting as agent.

Q. —selling to the contractor.

A. As agent.

Q. That was the secondary market.

A. Yes.

Q. And you had no occasion, therefore, to refer to any tertiary market?

A. No. No, because practically all conduit was sold in that manner.

3119 Q. So that accounts for your failure to use that term in any of your communications or discussions with any of these conduit people.

A. Yes.

Q. You told Mr. Stewart that Mr. Herbert S. Blake, Jr., as an officer of the Organization Service Corporation, had nothing to do with this Rigid Steel Conduit Association matter. Do you recall the testimony?

A. Yes, sir.

Q. What official position did Mr. Herbert S. Blake, Jr., hold at the time when the Organization Service Corporation was handling matters for the Rigid Steel Conduit Association?

A. I do not believe he had an official position at that time. My memory is that he did not.

Q. What official position does he hold with the Organization Service Corporation now?

A. Vice-president.

Q. And how long has he held that?

A. About a year and a half, I believe.

Q. Was he connected in any wise with the Organization Service Corporation prior to a year and a half ago?

A. He was working part time for them, yes.

Q. In what capacity?

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A. Just in a clerical capacity in the office.

Q. He was an agent or employee of the Organiza-
3120 tion Service Corporation?

A. A portion of his time, yes.

Q. Prior to the time that he has been vice-president?

A. Yes.

Q. And for how long did he work in that clerical capacity?

A. Let me see. From '35 or '36 up until about a year and a half ago he was purely in a clerical capacity. He was attending law school at the same time.

Q. Throughout that period he worked as an agent for the Organization Service Corporation?

A. I would not call him an agent exactly; he was doing whatever work in the office—

Q. He was employed by it?

A. Yes.

Q. And working for its best interest?

A. Yes.

Q. All during that period of time?

A. Yes.

Q. C. C. Gregory has served as secretary of the Organization Service Corporation for how long?

A. Since, oh, early in the 1920's.

Q. She was an officer of the corporation in that capacity all throughout the time that you were directing and managing the affairs of the Rigid Steel Conduit Association?

A. Yes.

3121 Q. Or at least when the Organization Service Corporation was doing that?

A. Yes.

Q. In that connection she performed the usual functions of secretary of a corporation?

A. Only in so far as corporate records were concerned, or any papers that related to corporate affairs, that she might necessarily have to sign or attest as secretary.

Q. Any contracts requiring the secretary's signature she signed for the corporation.

A. Yes.

Q. And all other such matters.

A. Yes.

Q. That required a secretary's handling.

And Mr. Weiss, Paul Weiss, as treasurer of the Organization Service Corporation, served over what period of time?

A. Mr. Weiss has been with us for approximately 20 years.

Q. He has been treasurer how long?

A. I believe all of that time.

Q. And in that connection he has performed the usual functions of a treasurer of a corporation?

A. Yes.

Q. For the Organization Service Corporation?

A. Yes.

Q. And I believe you testified on direct that in
3122 addition to that he handled statistical work.

A. He is the head of the statistical department. He has general supervision over all the statistical work that we do.

Q. And in that connection handled certain statistical work for the Rigid Steel Conduit Association?

A. Yes.

Q. And what has been the position of Mr. Thomas Jordan?

A. Mr. Jordan is secretary of two or three different organizations that we have serviced over the period of years—not always the same ones, but he has been active as secretary of different organizations that we have serviced.

Q. What official position has he held with the Organization Service Corporation?

A. He has the title of vice-president.

Q. How long has he served in that capacity?

A. Oh, eight or ten years.

Q. Continuously?

A. Yes.

Q. You told Mr. Stewart that Mr. Bennett and Mr. Barton were talking to you during August, 1936, about the industry's problem, and that they outlined to you the problem in its entirety. Do you recall?

A. I want to correct you, Mr. MacIntyre. The conference that I had with Mr. Barton and Mr. Bennett was not in August; that was in September.

3123 Q. Well—

A. I just wanted to correct that.

Q. They outlined to you the industry's entire problem?

A. Well, I do not know that I can make it so comprehensive as "entire," but they gave me a very broad outline of the problems of the industry and its conditions.

Q. Did they at that time discuss with you any differences

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in price that were being charged by manufacturers of conduit either directly or through agents to consumers?

The Witness: Will you repeat that question, please?

(Question read.)

Q. From one consumer as distinguished from another.

Mr. Stewart: Well, even then I submit the question does not make sense.

Trial Examiner Norwood: Read it.

(Question read as follows:

"Q. Did they at that time discuss with you any differences in price that were being charged by manufacturers of conduit either directly or through agents from one consumer as distinguished from another?")

Trial Examiner Norwood: I think that that is clear.

Can you answer that question?

The Witness: Yes.

A. They discussed it with me from the standpoint of, in their opinion, there was a great deal of discrimination
3124 in the market by reason of different prices being made by the various individual manufacturers to their various customers.

By Mr. MacIntyre:

Q. Did they tell you that part of that discrimination was as a result of the use of the multiple basing-point system or dual basing-point price system?

A. Mr. MacIntyre, neither Mr. Barton nor anybody else ever discussed the question of freight or anything related to it with me.

Q. In their discussions with you, then, they did not concern themselves with the question as to whether or not their use of the basing-point system on the Chicago and Pittsburgh base was discriminatory as against one customer or another?

A. They did not discuss that. I never heard the subject of freight discussed in my contact with the Rigid Steel Conduit Association.

Q. Did they discuss with you the question as to whether or not the charging of a delivered price to a customer in Altoona, Pa., that was different from a price that they charged on a delivered price to a customer in—

Mr. Stewart: Norristown.

Q. —Philadelphia was discriminatory?

A. As I stated, they never brought in the question of

the relativity of freight or how their prices were made, or anything else in connection with it, in the discussion
3125 of whether or not discrimination existed; and I did not ask any questions on the subject—well, that is going beyond your question.

Q. Do we correctly understand your testimony here, then, to be that you did not in any of your connections with any of these Respondents discuss or advise with them concerning the question as to whether or not their use of the basing-point method of pricing was discriminatory?

A. I have—to be perfectly frank, I have stated to two or three of the manufacturers in discussing the subject with them academically as related to the entire steel industry that in my opinion under the Robinson-Patman Act the use of the basing-point system is discriminatory.

Q. But did they ask you to study the question for them in this industry—

A. No.

Q. —after having made that statement to them?

A. No. No.

Q. There was no request made by them of you to make such a study for them?

A. No.

Q. Or to give them advice on it?

A. No.

Q. After considering it?

A. No, sir.

If I may add, in explanation, I know that both they,
3126 and I know that I, accepted the existing—existence of the basing-point system as being a fixed factor or method of doing business that existed for years and would continue. Nothing could really change it very readily.

Q. You became convinced of that fact after talking with these Respondents; is that correct?

A. Well, not only those Respondents, but other men in the steel industry at different times that I discussed that with them.

Q. That is, in your discussion with these Respondents in the conduit industry and in your discussion with representatives of the steel industry you became convinced of that fact?

A. I did, yes.

Q. That this basing-point system was so fixed that it would not be changed?

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A. Yes.

Q. Why did you incorporate under the laws of the State of New York the Organization Service Corporation?

Mr. Robison: I object to that as irrelevant and immaterial.

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: I suppose on cross-examination you might ask him that.

Objection overruled.

3127 A. If you mean as to the reason for selecting New York, we were doing business in New York.

By Mr. MacIntyre:

Q. Why did you incorporate it at all?

A. The reason I incorporated it was that it was at that time an added feature of my business to serve these organizations, and the set-up to do so properly, and have the business grow to a point of being self-sustaining required capital, and the original set-up of the Organization Service Corporation was on the basis of attracting that capital from various of my acquaintances and friends, and they did subscribe to the capital stock in the corporation. I set it up because I wanted money.

Q. Your certificate of incorporation is in evidence here as Respondents' Exhibit 145. That is one reason I asked that question. Now, I will ask one further question on that: Isn't it a fact that you, as an attorney-at-law in New York, would not have been permitted under the statutes of that State to have advised trade associations without incorporating?

A. At that time I was not a member of the bar of the State of New York.

Q. Well, I am asking you if you, as an attorney-at-law in New York, could have advised trade associations or served as an official of a trade association except

3128 through on incorporated organization?

Mr. Stewart: I object to the question for the reason that it assumes a fact that does not exist. The witness has said that he was not an attorney-of-law at the time he incorporated, so the question is wholly immaterial.

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Well, are you an attorney?

The Witness: I am.

Mr. Stewart: But he was not at the time of the incorporation, that is the point.

The Witness: I had not been admitted to practice in New York at the time the corporation was organized.

Trial Examiner Norwood: Objection sustained.

Counsel can reframe his question.

By Mr. MacIntyre:

Q. Isn't it a fact that at the time you were serving the Rigid Steel Conduit Association through your Organization Service Corporation that you could not, as an attorney at law, have so served them except through the corporation?

A. I don't know why not.

Q. Isn't there a statute in the State of New York that would have prohibited you from doing that as an attorney at law; that is, serving as a trade association executive and advising them?

A. No, not within my knowledge.

3129 Q. You told Mr. Stewart that you were certain that the consigned stock agreements should be discontinued, and you so advised the industry. Will you tell us why?

Mr. Stewart: I object. That is not the question asked and not the testimony given. The question asked and the testimony given was as to whether or not he had advised that the consigned stock method of doing business be discontinued. He said that he did so advise. So let us stick to the text. It was the method of doing business.

Mr. MacIntyre: Please read the question.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Did you say that?

The Witness: No, I did not.

Trial Examiner Norwood: Objection sustained.

By Mr. MacIntyre:

Q. Were you advised that there were any consigned stock arrangements being carried on in the industry in the absence of consigned stock agreements?

Mr. Stewart: What was that? Read that, please.

Trial Examiner Norwood: Read it.

(Question read.)

A. No, I don't know of any. I don't believe I was so advised.

Trial Examiner Norwood: Any manufacturers
3130 consigning stocks without doing so under a contact?
The Witness: I do not know of any.

By Mr. MacIntyre:

Q. And you testified that the method under those contracts should be discontinued, in your opinion. Is that correct?

A. I criticized the consigned stock method of doing business as something I did not believe in as good business economy.

Q. The industry said "no."

A. The industry said that it was so fixed that they could not alter that procedure.

Q. Is it your opinion, Mr. Blake, that members of a trade association are at liberty under the law, that is, the anti-trust laws, to report prices on past and closed transactions to a common agent for the purpose of securing through that common agency a collective comparison with previously announced published prices?

A. I do not.

Mr. Stewart: Do not what?

Q. Do you consider that it—

Mr. Stewart: I was just wondering what that answer meant.

Trial Examiner Norwood: Read the question and answer.

(Question and answer read.)

Trial Examiner Norwood: Go ahead.

3131 By Mr. MacIntyre:

Q. Is it your opinion that members of a trade association are at liberty under the anti-trust laws to report past and closed transactions, including the prices at which those transactions have taken place, to a common agent in such a way as permits them to secure a collective comparison of the prices thus charged with previously announced published prices?

A. I do not.

Mr. Stewart: Well, I am wondering. Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Read the question and answer.

(Question and answer read.)

Mr. Stewart: I do not what?

The Witness: It should be it is not my opinion.

Mr. Stewart: That is what I am trying to point out.

Trial Examiner Norwood: Now, you can bring that out on the redirect. If the question is involved you may object to it, but if you fail to object to it you let the answer go then until you have an opportunity to clarify it later.

Mr. Stewart: Nothing to clarify. I just want to make sure that the question was answered.

Trial Examiner Norwood: Go ahead.

Mr. Stewart: I won't ask it again.

3132 By Mr. MacIntyre:

Q. Is it your opinion that it is lawful for members of a trade association to report prices at which they have sold goods for either the purpose or the result of competitors comparing that price with prices previously announced and published by the seller?

A. It is not my opinion that they should, from the angle that you are asking that question.

Q. You mean by that that it is your opinion that it would not be lawful?

A. Right.

Q. For what purpose, Mr. Blake, would you say that Mr. Booth of your organization wrote members of the Rigid Steel Conduit Association for lists of jobbers and wholesalers?

A. I didn't know that he had. If—

Mr. Stewart: Now, I object, then. If he doesn't know that he did, I submit that speculation isn't in order.

Trial Examiner Norwood: Read the question and answer up to this time.

(Question and answer read.)

Trial Examiner Norwood: That is the answer, I think.

By Mr. MacIntyre:

Q. Now, referring to Respondents' Exhibit 146, which is a draft of a consigned stock agreement form, why
3133 did you send this draft contract form to members of the industry?

A. I was suggesting that they give consideration to such a form with the idea of their giving me any countersuggestions which they might have which would be any improvements—or would make any improvement in the form being used.

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Q. In looking forward to what?

A. Looking forward to the production of the form in best possible shape for the—its use as a consigned stock agreement.

Q. Would your answers be the same as to the reasons for your sending the form, which is in evidence here as Respondents' Exhibit 147?

A. Yes, sir.

Q. And would your answer be the same as to Respondents' Exhibit 148, which contains statements as to conditions of sale?

A. Yes.

Q. Who made the investigation of specific job contracts?

A. Initially they were made by an agency known as the Hanson Agency—Hanson & Associates, I believe.

Q. At the request of the Organization Service Corporation?

A. No. Some arrangement had been made prior to our contact with the Organization—with the Association, and we were referred to the Hanson Agency as being in position to make such investigations. Subsequently, an ar-
3134 rangement was made to make such investigations through a young man who had been in the employ of the Hanson Agency in its New York office, and again the services of a Mr. Richards was employed for the purpose. They were all agencies engaged in that general business.

Q. By the Organization Service Corporation?

A. We did not—we only handled the work with them. They—the arrangement was made for such of the manufacturers as cared to have their contracts investigated through that agency.

Q. The manufacturers then submitted to you requests for certain investigations?

A. They would send in a contract with the data and ask to have them investigated, and Mr. Booth would take it up with the agency and try to assist the agent in any manner that he could, clerically, keeping track of it, and following the tracing of the investigation, and receiving a report and sending it to the manufacturer who had sent it in.

Q. Well, now, let us start over again. The manufacturer sent the request to Mr. Booth for an investigation?

A. Yes.

Q. Mr. Booth turned it over to one of these agents—

A. Yes.

Q. —to make the investigation?
A. Yes.
Q. He didn't make any investigation himself?
A. I think he went out on one or two investigations just for the purpose of checking up to see—
3135 Q. Learning how—
A. —that the work was done.
Q. For the purpose of learning how it was done?
A. And how thoroughly it was being done; whether it was being done properly or not.
Q. But as a general rule the inquiry came to him from the manufacturer?
A. That is right.
Q. He turned it over to one of the agents?
A. That is right.
Q. And the agent made the investigation?
A. That is right.
Q. And made a report back to Mr. Booth?
A. That is it.
Q. Instead of making it direct to the manufacturer?
A. That is exactly it.
Q. And Mr. Booth then made the report to the manufacturer?
A. Yes, sir.
Q. And Mr. Booth made a certain payment to the agent for making the particular investigation; is that correct?
A. I couldn't tell you now, from my own memory, just how the payments were handled, except to state that each manufacturer paid for the number of investigations that were made for his account. How the payments were
3136 handled, I don't know.
Q. But each agent was paid for each job that he did?
A. That is it.
Q. And was paid through the offices of the Organization Service Corporation?
A. I believe they were, but they may have been paid directly by the manufacturers.
Q. Will you please tell us the names of the jobbers and wholesalers who were present at this Biltmore Hotel, New York, meeting of January 6, 1937?
A. I didn't know a single man that was there, did not meet him personally, and have no idea of who was there.
Q. How could you state, then, to Mr. Austin, that they

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were not there as representatives of the National Electrical Wholesalers Association?

Mr. Austin: I object to that question, Your Honor. He didn't make that statement to me. I asked him specifically if anybody had told him that the jobbers present were representatives, and he said "no," that nobody had told him. He didn't say whether he knew or not.

By Mr. MacIntyre:

Q. Can you state, then, Mr. Blake, whether or not that these manufacturers and wholesalers who were present at that meeting were there as representatives of the National Electrical Wholesalers Association?

3137 A. I have no knowledge.

Mr. Austin: That is exactly what I wanted to bring out.

Q. And you told Mr. Stewart that Rigid Steel Conduit Association, or the Organization Service Corporation, had not compiled a list of jobbers. You were not attempting to say that Mr. Booth had not written to the manufacturers for certain lists; were you?

A. I stated previously that I didn't know that he had.

Q. Well, is your testimony to be taken now as being positive on the point that he did not?

A. I am positive that I don't know that he did or did not.

Q. But you don't want to testify that you are positive that he did not?

Mr. Stewart: I submit now that has gone far enough.

Trial Examiner Norwood: I think he has answered your question.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Mr. Stewart asked you a number of questions about investigations of the Organization Service Corporation by Federal Trade Commission.

3138 Mr. Stewart: Now, I want to suggest that I didn't ask him about any investigations. I asked him about visits and inquiries.

Q. And you told him that you had been visited on a number of occasions?

A. Yes.

Q. But you didn't recall that you had been or the operations of your organization had been criticized at any time; do you recall that?

A. That is exactly what I said, I believe.

Q. Is it your testimony now, Mr. Blake, that you do not recall that the Federal Trade Commission has, as a result of some of those investigations, issued complaints against the Organization Service Corporation as a Respondent, other than in this case?

A. They had not up to the time of this—of this filing of this complaint.

Q. Well, it had occurred before you testified here this week; hadn't it?

A. I beg your pardon?

Q. Before you had testified here this week it had occurred?

A. I think Mr. Stewart's question went to whether or not there had been, up through the period of time that I served this Rigid Steel Conduit Association,—

Mr. Stewart: No. It was ever more limited than 3139 that, Mr. Examiner. You probably recall that the question was as to what he had told Mr. Bennett. That is what we were talking about, what he told Mr. Bennett.

Mr. MacIntyre: O. K. We will find out what the facts are.

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Could you tell Mr. Bennett the same thing now that you told him then?

Mr. Stewart: Well, I object to that as a meaningless question.

Trial Examiner Norwood: No, I think not.

Mr. Stewart: Could you tell Mr. Bennett now what you told him then? What is he talking about?

Trial Examiner Norwood: I think it is—

Mr. Stewart: He might have talked about the state of the weather. I don't know what he is talking about.

Trial Examiner Norwood: Could he tell Mr. Bennett now that the Federal Trade Commission had not made a complaint against him.

Mr. Stewart: If that is the question that is another matter.

Trial Examiner Norwood: It is perfectly clear following the other question.

Mr. Stewart: Go ahead.

3140 Trial Examiner Norwood: Can you answer that?

A. No, I could not.

By Mr. MacIntyre:

Q. And even if the complaint had not issued in this case you could not tell him that; could you? You could not give him the same answer?

A. No, I couldn't. In other words, there has been another complaint in which we were made a party.

Q. If the market of a commodity moves neither upward nor downward, is it stable?

A. Well, I think that would be the height of stability.

Q. If you have no movement in the price of a commodity in either direction for a period of three months in a market—

A. I think that would be wonderful.

Q. —is that stable?

A. That is stable.

Q. And when you use—

A. At that time.

Q. And when you use the word "stable" and "stability" would it refer to such a situation?

A. No. No.

Q. They are not the same?

A. That is something I never expect to see.

Q. Well, would the definition of "stable" and "stability," as you have used those terms, fit a situation, if

3141 you were referring to price in a market, where the price did not move upward or downward for as much as three months?

A. Will you please read that question?

Trial Examiner Norwood: Read the question.

(Question.)

A. Yes.

By Mr. MacIntyre:

Q. Such a market would be steady, as you have used that term, wouldn't it?

A. Yes.

Q. On direct examination you stated that you have found that 90 percent of jobbers were selling below cost. How did you find that out?

A. Below cost?

Mr. Stewart: Said what?

The Witness: Did I make any such statement?

Mr. Austin: I think I object to that, too.

Mr. Stewart: I have no recollection of that. You can ask him if he said that. I haven't the faintest recollection.

Trial Examiner Norwood: Did you say that?

The Witness: I did not, to the best of my knowledge and belief.

By Mr. MacIntyre:

Q. Do you have any information upon which you
3142 could base such a statement?

A. I—I couldn't base such a statement as that on any information that I have.

Q. In other words, you do not know whether that is a fact or not?

A. Not that statement as you made it.

Q. If you did not know whether these jobbers and wholesalers who were present at this meeting at the Biltmore Hotel in New York on January 6, 1937, were representatives of the National Electrical Wholesalers Association, how could you testify on direct as you did that you had not had any contacts with any of its representatives?

Mr. Stewart: Now, what is that question?

The Witness: What does that mean?

Mr. Stewart: If he did not know they were?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Stewart: Oh, I see.

Trial Examiner Norwood: That is perfectly—

Mr. Stewart: What you mean, if you bump a fellow in the dark and you don't know who he is you can't say—

Trial Examiner Norwood: Go ahead.

Mr. Stewart: Go ahead.

A. I think I can say it very well, indeed, in the light of the question and the manner in which it was asked on
3143 the direct question by Mr. Stewart. I came into this room. I was introduced as Mr. Blake to a lot of gentlemen who were sitting there, with the statement that these gentlemen are jobbers of conduit, and Mr. Quinn went on to state they were there for the consideration of costs in connection with the distribution of conduit. I made my statement that I could not be party to a discussion of that

type between the members of the Rigid Steel Conduit Association as such or as having any relation to the Association. I excused myself and went out. I wouldn't call that contact.

Q. In other words, you were excepting such instances as those when you said you had no contact on your direct examination?

A. Yes.

Mr. MacIntyre: I believe that is all.

Trial Examiner Norwood: Redirect.

Redirect Examination by Mr. Stewart.

Q. Mr. Blake, what decisions of the Supreme Court of the United States did you have in mind and in part at least rely on in your advice to the members of the Rigid Steel Conduit Association?

The Witness: I didn't get the first part of your question, Mr. Stewart.

Trial Examiner Norwood: Read it.

3144 (Question read.)

A. Primarily on the so-called Cement case and the Maple Flooring case and the Sugar Institute case.

By Mr. Stewart:

Q. Did your son, Herbert S. Blake, Jr., ever perform any work of any nature for the Rigid Steel Conduit Association?

A. Not to my knowledge, no.

Q. (By Mr. Austin.) Mr. Blake, in this last colloquy with Mr. MacIntyre on cross, his last question to you had in it the phrase "other instances of contacts with jobbers," which, I think, leaves an implication I would like to straighten out. Did you ever, during the period when you were operating the Rigid Steel Conduit Association, other than at that meeting at the Biltmore on January 7, meet with jobbers of any kind or description of conduit?

A. I did not, except as I testified, with regard to my talk to Mr. Weir with reference to his not being furnished with any lists or information with regard to the distributors or jobbers of the conduit manufacturers. That is—he wasn't—he has no relationship to the organization that Mr. MacIntyre refers to.

Mr. Austin: That is all.

Mr. MacIntyre: I have a further question.

Recross Examination by Mr. MacIntyre.

3145 Q. When you were advising these Respondents concerning the anti-trust laws and basing that—or relying in that advice upon the Maple Flooring and the Cement cases, 268 U. S. 563 and 268 U. S. 588, did you also advise them that the Supreme Court in its opinion in those cases stated that the activities that were engaged in by those two trade associations, in so far as the evidence before the court was concerned, did not disclose a showing of a restraint on trade, and, therefore, as to the activities which did not thus show a restraint of trade they did not consider them unlawful? Did you so advise your people in the Rigid Steel Conduit Association of that fact?

A. I didn't—pardon me.

Mr. Stewart: Do I understand that counsel is stating that is what the cases hold?

Mr. MacIntyre: I am asking him whether he advised them as to that. I am not saying what the case held.

Mr. Stewart: No. Well, I object on the ground that it doesn't properly state what the case held.

Trial Examiner Norwood: Objection overruled.

Did you so advise them?

The Witness: I did not so advise them, because I did not use those cases in advising them. I simply based my opinion and my advice on my interpretation of the decisions in those cases and the opinion of Justice Stone.

3146 Mr. MacIntyre: That is all.

Mr. Stewart: That is all.

Mr. Austin: That is all.

Trial Examiner Norwood: Thank you, Mr. Blake.

The Witness: Thank you, Judge.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. Stewart: Oh, shall we start again, five minutes to four? All right with me.

(Discussion off the record.)

Trial Examiner Norwood: The hearing is recessed until 10 o'clock tomorrow morning.

(Whereupon, at 3:55 o'clock p. m., December 15, 1941, the hearing in the above-entitled matter was adjourned.)

3149 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on yesterday, the hearing in Docket No. 4452 is now reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C., at 10 o'clock a. m., on the 16th day of December, 1941.

Please note the appearances.

Call your next witness.

Mr. Stewart: Mr. Walker, please.

Trial Examiner Norwood: Was this witness sworn in this case already?

Mr. Stewart: Yes, in New York.

Trial Examiner Norwood: Give me your full name again, please, sir.

Mr. Walker: Hervey S. Walker.

Trial Examiner Norwood: Proceed.

HERVEY S. WALKER was thereupon called as a witness for the Respondents, and, having been previously sworn, testified further as follows:

Direct Examination by Mr. Stewart.

Q. Mr. Walker, will you give us the circumstances surrounding the issuance of your various price cards.

3150 A. As a matter of fact, price cards really—

Trial Examiner Norwood: (Interposing) Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Go ahead.

A. The price card is really a manufacturer's list price which when business is good and times are propitious, he is able to get; when they are not, it is a basis on which he goes ahead and discounts.

By Mr. Stewart:

Q. Well, now, what has been your policy with reference to the issuance of price cards from the standpoint of conferring or agreeing with your competitors?

A. The manufacturer, of course, does not do that. When he feels that the market should take a higher price, or a lower one, he goes to work and puts out what he calls a card.

Mr. MacIntyre: Your Honor—

By Mr. Stewart:

Q. I am asking you what you did, not what the manufacturers did.

Mr. MacIntyre: Your Honor please, I move that the portion of the witness' answer—

Mr. Stewart: (Interposing): I am going to ask him—

Mr. MacIntyre: (Continuing) —where he has attempted to say what all manufacturers, or any manufacturer, has done be stricken unless there is some better foundation laid for the answer than the question lays.

3151

Trial Examiner Norwood: Did you make that statement from your own knowledge, Mr. Walker?

The Witness: Yes.

Could I just change my statement and insert the word "I" instead of "we", which I might have used?

Trial Examiner Norwood: You may do that.

By Mr. Stewart:

Q. Mr. Walker, do you have a memorandum which you can use to refresh your recollection as to the facts regarding the issuance of each price card by your company?

A. I have some information here; yes, sir.

Q. Well, can you give us that information without referring to the memorandum?

A. What information, Mr. Stewart?

Q. Well, the information on the memorandum, the information as to the facts surrounding the issuance of each price card.

A. Well, as a matter of fact, even with my memorandum I couldn't give you that information; each of those price cards, of which I have a memorandum, from 69 to 85, were issued under different circumstances, and for different reasons.

Q. Well, now, what I want to know is, Do you require the memorandum for the purpose of refreshing your recollection, or can you remember the circumstances without looking at the memorandum?

3152

A. I would rather have the memorandum, and then I wouldn't have to rely so much on my recollection.

Q. All right. Will you give us the facts with regard to the issuance of each of your price cards beginning with card 69. Look at your memorandum.

Mr. MacIntyre: If Your Honor please, I ask that any memorandum that is used be marked for identification.

Mr. Stewart: No objection. Let the stenographer mark that.

(A document was thereupon marked for identification "Respondents' Exhibit No. 167".)

By Mr. Stewart:

Q. All right, now, will you first give us the date on which you issued your card and, in so far as you recall, whether you initiated any card. Take each card.

A. Mr. Stewart, of course, you are asking me to go from card 69 to card 85. Our card was issued in 1933. That is 8 years ago.

Q. That is right.

A. I am perfectly frank to admit that I can't tell you why we issued 69.

Q. All right, go ahead. Take 70.

A. Mr. Stewart, outside of giving information
3153 which is tabulated on the sheet which has been put in evidence I can't add anything to it, except that, as far as my recollection is concerned, there might be a couple of cards in there which we initiated due to either cost increases or decreases. You see, a card, as far as we are concerned, was issued to take care of market conditions as they might have occurred at the time, and those conditions might have been very much involved. There may have been a dozen things that entered into any change in published price.

Q. Well, let me ask you this: To what extent did you confer or agree with any of your competitors with regard to the issuance of any of the cards on your list?

A. We never agreed with any competitor in regard to any card that we issued. Of course, when two men meet on a street corner, when they are competitors, they talk prices.

Q. Yes.

A. But as far as agreeing, we never agreed on anything.

Q. Now, let me ask you, which one of those cards from 69—to 84, is it?

A. Eighty-five.

Q. —85 did your company initiate?

A. I couldn't tell you, sir.

Q. Take card—

A. I can say this in answer to your question, that some of the cards that we issued we did not follow, which
3154 it was our custom to do when we felt that a card was proper. There were some cases—I refer particularly to card 79—we never issued a card to correspond with our competitors' No. 79 because the price was so low that we did not care to take business at that price.

Q. What about 75? Did you issue that one?

A. I couldn't tell you, sir. I assume we did, because my memorandum does not say we didn't.

Q. Now, what were the circumstances under which 76 was issued, if you recall?

A. Mr. Stewart, can I go back and answer your question more fully?

Q. Yes.

A. For instance, we never issued card 73.

Q. Any other numbers that you never issued?

A. No; only those two.

Q. Now, what about 76? What were the circumstances under which 76 was issued?

A. Card 76 was issued primarily because the price of pipe was raised, and whenever the price of pipe was raised, of course, it was necessary for the manufacturer of conduit to go ahead and issue a new card.

Q. Now—

A. If he had to pay more for his pipe he has got to get more for his product, because pipe is, roughly
3155 speaking, 50 percent of the cost of the product.

Q. Do you manufacture pipe yourselves?

A. No, sir.

Q. Now, do you recall as to whether or not in March, 1937, which was the date of issuance of card 76, that you were confronted in any way with any labor problems?

Mr. MacIntyre: I object. It calls for irrelevant and immaterial matter. Whether he recalls it or not is immaterial, because it in itself is immaterial.

Mr. Stewart: It is certainly material if they had a labor situation that increased their cost.

Trial Examiner Norwood: Was that at the time of one of these cards?

Mr. Stewart: Seventy-six, yes; card 76. Major Quinn has already testified to it.

Mr. MacIntyre: Your Honor, I say it is irrelevant and immaterial, because the Supreme Court of the United States has already said in more than one case, and as late as May 6, 1940, that when a group of competitors, such as these here, are charged with agreeing on prices it does not matter whether it is above, at, or below the cost.

Trial Examiner Norwood: Objection overruled.

Mr. Stewart: I am a little tired of these speeches. It is the same thing we have heard so often.

Trial Examiner Norwood: Proceed.

3156 By Mr. Stewart:

Q. Go ahead, Mr. Walker.

Trial Examiner Norwood: They are not evidence.

Mr. Stewart: I know, but it costs us 21 cents a page.

A. I would simply say this, that when card 76 was issued it was issued primarily because of the increase in the cost of pipe. Now, the chances are the only reason for the increase in pipe would have been the increase in labor; therefore, it is fair to assume there was an increase in labor also.

By Mr. Stewart:

Q. What about card 74? Does your memorandum enable you to tell us whether or not you initiated card 74?

A. I couldn't tell you that, but I could tell you that card 74 was issued at the time when pipe prices started up.

Q. Now, what about card 83? Do you recall whether or not you initiated that card on one product only?

A. I couldn't tell you, sir.

Q. Well, did you issue—

A. I know at the time we did not issue a printed card, and when a card of that kind came out we mimeographed and copied—I would not say we copied; I will say we did not print a card, which would be evidence that we were not very well satisfied with what was going on. We mimeographed one a month later when we issued card 84—

3157 Q. Eighty-four?

A. No; we issued 83-A. And that was simply for the purpose of so the trade would not get mixed up on the card numbers. It made easier for us to sell our product.

Q. Well, can you give us any reason, other than the one you have just stated, for using the same numbers as your competitors on your card? Is there any other reason?

A. Well, of course, the cards are chronologically numbered, simply for purposes of identification. For instance, if a man asks us to quote him a price on some conduit, we simply enclose what we call card 75, or whatever the current card is, and say, "This is our price." Now, that card contains maybe 150 prices, together with certain terms, which are, of course, a part of our price. It is necessary for us to have that thing printed. You couldn't say that to a man every time you made a quotation.

Q. Now, Mr. Walker, were you a member of the committee which negotiated with Mr. Blake?

A. I was chairman of the section at that time, and, therefore, ex officio on that committee.

Q. You stated that you were chairman of the section. Did you mean chairman of the Association, or chairman of the—

A. Chairman of the Association.

Q. (Indicating.) I show you the Commission's Exhibit No. 533-A and B, ask you to look at it and tell
3158 us whether you have ever seen that document?

A. I never have.

Q. Will you look at the second page and see if you have seen that? There are two pages (indicating).

A. I never have, until yesterday afternoon.

Q. Mr. Walker, to what extent would you say you had difficulties in maintaining the Rigid Steel Conduit Association?

A. The difficulties were primarily that the members would not stay put; they would not pay their dues; and everybody who didn't particularly like something that was done would resign. The consequence was that it was only an association in name, so to speak, you never knew who were members and who were not members.

Q. Well, to what extent, if any, were there personal animosities?

Mr. MacIntyre: I object; it is a leading question.

Mr. Stewart: I did not suggest an answer.

Mr. MacIntyre: And otherwise improper.

Mr. Stewart: I am asking him to what extent, if any, there were personal animosities.

Mr. MacIntyre: He has not said there was.

Trial Examiner Norwood: Wait a moment.

Read the question.

(Question read.)

Trial Examiner Norwood: The objection is overruled.

3159 Answer the question.

A. There was a great deal of animosity among the members, which, I imagine, is natural among competitors. Somebody was always taking an order that the other fellow thought he should have and it made a great deal of ill feeling.

By Mr. Stewart:

Q. Mr. Walker, how genuine was the anxiety of the members of the Rigid Steel Conduit Association over the situations confronting them, arising out of the passage of the Robinson-Patman Act?

Mr. MacIntyre: I object. The question is improper in form.

Mr. Stewart: Oh, well, now—

Trial Examiner Norwood: The objection is sustained.

By Mr. Stewart:

Q. To what extent, Mr. Walker, were the members of the Association interested in the problems arising out of the passage—

Trial Examiner Norwood (Interposing): I think you will have to tell us what reactions there were from the members of the Association that this witness observed. You must give the facts of their attitude and their reaction to that passage.

Mr. Stewart: All right.

Trial Examiner Norwood: Just as you put in those letters here yesterday. Those were verbal actions
3160 showing their attitude to the entire matter.

By Mr. Stewart:

Q. Well, then, Mr. Walker, take your own case, for example, to what extent were you interested in the situations arising out of the passage of the Robinson-Patman Act?

A. Our company was scared to death, so was everybody else in the industry, because of the abuses to which we had allowed our business to get into prior to that time, and the Robinson-Patman Act apparently was passed so as to put business on a decent basis, which we had never done it on, and we didn't know how to react to it, or approach it, and that accounts for having gone to Blake.

Q. Mr. Walker, is your company willing to quote f.o.b. mill?

Mr. MacIntyre: I object. We are not concerned here with what the will of this company is from here on.

Mr. Stewart: All right.

Mr. MacIntyre: We are concerned with what actually was committed in the past.

Mr. Stewart: Now, wait.

Trial Examiner Norwood: I think that counsel—

Mr. Stewart: Wait. I will strike the question. If I can only stop these speeches somewhere, I will do it.

Trial Examiner Norwood: I think that counsel is well within his rights.

By Mr. Stewart:

3161 Q. Has your company been willing, and is it willing, to quote f. o. b. mill?

A. We have done it in the past, and we are willing to do it in the future. Our trade, as a rule, however, will not accept such quotations.

Q. I did not ask you that question.

What has been your experience with your trade from the standpoint of their desire to have delivered prices?

A. Our trade does not want a mill price. They want to know what the goods cost them laid down where they are going to use it. They want the manufacturer to pay the freight, which, if we quoted mill, they would have to pay themselves and put up the money for it. A freight item is a great item in our business. As a matter of fact, it is 5 percent of our selling cost. The only person that ever asked us for a mill price was the Government, so as to secure the benefit of the land grant bill of lading.

Q. In that connection, what do you do with regard to meeting your competitors' terms?

A. We always meet them. We have to do it to stay in business.

Trial Examiner Norwood: How do you do it and still

enable the Government to take the benefit of the land-grant rates?

The Witness: Your Honor, we do it with a rubber
3162 stamp. It is about half a page long. We quote a mill price, and we tell the Government we will equalize that price with any of our competitors at any point, and here the Government figures the freight and tells us what we are going to get for it.

Mr. Stewart: Will you mark these for identification.

(Documents were thereupon marked for identification "Respondents' Exhibits Nos. 168-A to 168-E.")

By Mr. Stewart:

Q. Mr. Walker, I show you a document marked Respondents' Exhibit 168-A to E, and ask you to look at it and tell us what it is, please (indicating).

A. This is our form of consigned stock agreement which we used in April, 1932.

Q. Now, how long had you used that form of consigned stock contract?

A. We went into business in 1928, and we have used it from that time at least up until this time.

Mr. Stewart: I offer it in evidence (referring to Responents' Exhibit 168-A through E; handing papers to Mr. MacIntyre).

Mr. MacIntyre: I would like to ask the witness a question about this.

Trial Examiner Norwood: Go ahead.

3163 *Examination on Voir Dire by Mr. MacIntyre.*

Q. Is this copy of an executed contract that you had with that party in San Francisco?

A. Yes, sir.

Q. And you did business with them pursuant to that contract?

A. Yes, sir.

Q. Did you operate—

Mr. Stewart: I object to that.

Mr. MacIntyre: Well—

Mr. Stewart: No, the only question is that the form of contract that was in use prior—or during that period—prior to the Blake contract. Now, that is all you are entitled to find out.

Trial Examiner Norwood: Don't ask any questions excepting those bearing upon the question of admissibility.

Mr. MacIntyre: You haven't fixed the date, Mr. Walker; you haven't fixed the date when you discontinued the use of this contract. I object to that.

Mr. Stewart: I object to that. He can answer that on cross-examination.

Trial Examiner Norwood: I think that bears on the question of materiality; I will overrule the objection.

Answer the question.

A. Mr. MacIntyre, as a matter of fact in those 3164 days we were a very small company. You will notice that was typewritten. We used this type of contract until we got one which Blake tore apart and put together decently.

By Mr. MacIntyre:

Q. In other words, you used this until the Blake contract was adopted about the end of 1936?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Mr. MacIntyre: I do not see the relevancy and materiality of this. He did not use it after the Blake contract came in.

Trial Examiner Norwood: Do you object to it?

The Witness: Oh, wait a moment.

Mr. Stewart: Wait a minute.

The Witness: Wait a moment.

Mr. Stewart: All right. Now, since he has raised that question—

The Witness: Where we had contracts of this kind in effect, we didn't take them out and put Blake's in. We may have in some cases. We only used Blake's where we took on new accounts. We didn't take any of those out.

By Mr. MacIntyre:

Q. But as to this?

A. That contract does not differ from Blake's 3165 contract except it is not paragraphed the same.

Q. But as to Respondents' Exhibit 168, you did not execute any more of these after Blake's came into existence, did you (indicating)?

BLEED THROUGH – POOR COPY

A. No, sir.

Mr. MacIntyre: I object to it; it is irrelevant and immaterial.

The Witness: Don't forget that we let those remain in existence, stay in existence; we didn't take them out.

Mr. Stewart: Your Honor, aside from—

Trial Examiner Norwood: I think that this paper might be important in the study of what changes this industry made in their contract. You are charging that they adopted a uniform contract.

Mr. Stewart: That Mr. Blake devised a scheme to fix prices, and now what I am showing by these contracts, these consigned stock contracts which were in existence prior to the Blake form of contract, is that the consigned stock method of doing business was in existence, and there is no essential difference, legally, between the Blake contract and the contracts that were in existence, so that Blake didn't do anything.

Trial Examiner Norwood: I shall want to look over these contracts and compare them—

Mr. Stewart: Obviously.

3166 Trial Examiner Norwood: —with the one that was used afterwards.

Mr. Stewart: Obviously.

Mr. MacIntyre: Your Honor please, it goes to a point like this: If the Respondents are charged with fixing prices from and after January 1, 1937, for example,—for the sake of this argument,—and the proof is in that they did that, then how relevant a matter is it to show they did not fix prices in exactly the way that they were charged?—

Trial Examiner Norwood: Well, this might bear on the issue.

Mr. MacIntyre: —prior to that time?

Trial Examiner Norwood: Well, this might bear on the issue of whether or not they did. You mean there is evidence in that they did it; is that what you mean, Mr. MacIntyre?

Mr. MacIntyre: After a certain date there is evidence that they adopted a uniform contract with Mr. Blake.

Now, to show some time prior to that that they did not adopt Mr. Blake's contract, but something else, which does not meet an issue set forth in the complaint, then, of course, they are offering irrelevant and immaterial matter.

Trial Examiner Norwood: I think that it has probably further bearing on this question than that.

I will overrule the objection and receive the exhibit,
3167 Respondents' Exhibit No. 168-A to E.

RESPONDENTS' EXHIBIT NO. 168-A to 168-E, was offered and received in evidence.

Direct Examination by Mr. Stewart (Continued).

Q. Now, Mr. Walker, addressing yourself to the question of the warehouse stocks; did you have that problem with your company?

A. Yes, sir.

Q. As to whether or not you should continue warehouses?

A. Yes, sir.

Q. Will you state what you did?

First, state what the problem was.

A. We took them out wherever we could, and where we couldn't they still remained.

Q. Did you do that by virtue of any agreement or understanding with your competitors?

A. We did not. We did it because we were taking a licking, and didn't like it.

Q. Because you were taking what?

A. Taking a licking on cost.

Q. There are certain public bids in evidence, some in connection with the Panama Canal, some with the Navy Department. Will you state what the policy of your
3168 company has been with reference to bidding on Government projects such as those I have referred to?

A. If we are particularly anxious to get a particular order that is advertised, we go ahead and quote a price which we think will take the business. If times are good we quote what we call our published card; if the market is weak, then we quote off that card. If we don't happen to want that particular piece of business, we quote our published price; if we know the other fellow will quote less, and take it.

Q. Now, how do you find out whether they will quote less and take it?

A. By watching the market we can pretty nearly tell what the other fellow is going to do. If we know what the condition of his business is, if he needs the business he will cut to take it; if he doesn't he will quote high.

Q. Mr. Walker, to what extent do you in your plant

manufacture products which compete with rigid steel conduit?

A. We manufacture two other products that compete, armored cable and non-metallic flexible cable.

Q. I omitted to ask you, addressing ourselves to the question of the warehouse problem, what increase in cost, if any, was there to the consumer by virtue of the elimination of warehouses, as far as your company is concerned?

Mr. MacIntyre: I object. Irrelevant and immaterial.

3169 Whether or not that the Respondents had costs increased as a result of their combined action, it is unlawful if they combined to do the act which is charged in the complaint, irrespective of the fact that they increased or decreased costs.

Trial Examiner Norwood: Now, Mr. MacIntyre, there is just a slight difference between your theory and the Respondents here with respect to proving these issues. You are assuming that the issues have already been proven. Now, this thing bears on their reasons for maintaining this system here.

Mr. MacIntyre: If it is a system, that is another thing. If it is a matter of an act that was committed, such as withdrawal of warehouse stocks, that is still another. But, of course, the proving of doing something else does not excuse them from the specific act of withdrawal of warehouse charges, which has been proven.

Trial Examiner Norwood: You are contending that they adopted this consignment system for a certain purpose. Now, any testimony that will throw further light on that purpose must be admitted.

Overrule the objection.

Mr. Stewart: You have the question, Mr. Walker?

The Witness: No. What is the question?

(Question read.)

A. Our company made no difference in our prices. We had been assuming that cost of warehousing. We did

3170 not like it, so we withdrew them. It did not change our prices any.

Trial Examiner Norwood: You balanced the expense of running your own warehouses against the expense of maintaining these stocks for your—

The Witness: Well, through a distributor; yes, sir.

Trial Examiner Norwood: —distributors. Do they compare? Can you compare them?

The Witness: Your Honor, whether we kept material in a warehouse or whether we kept in a jobber stock under consignment, the cost was the same, except the rent that we would have paid for that warehouse.

Now, there are certain places where we still maintain warehouses, because we have no rent to pay. The agent is willing to stock up because it gives him a little edge on his competitors, because he can offer it promptly instead of having to wait for a mill shipment. For instance, we have two, in Los Angeles and San Francisco.

Trial Examiner Norwood: Go ahead.

By Mr. Stewart:

Q. Mr. Walker, so far as you know, was there any agreement or understanding among the manufacturers of rigid steel conduit with reference to the allocation of territory?

Mr. MacIntyre: I object. It calls for matter that it has not been shown that this witness, through any foundation that has been laid, has reason to know as to the ex-
3171 istence of all understandings existing between other manufacturers.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: He has laid no foundation for this question.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I think he had better just tell us his own story about that.

Objection sustained.

Mr. Stewart: All right.

By Mr. Stewart:

Q. Mr. Walker, what agreement or understanding did your company have with your competitors with reference to the allocation of territory for the sale of your product or their products?

A. Absolutely none, and I have never heard the thing brought up before, either.

Q. And what methods were there in use during the existence of the Rigid Steel Conduit Association by which members were coerced into doing anything? Were there any coercive methods, any penalties, any sanctions, any boycotts?

A. I never saw a competitor of mine that could be coerced.

Trial Examiner Norwood: Now, he has asked you a factual question.

By Mr. Stewart:

3172 Q. Were there any of those methods?

Trial Examiner Norwood: Yes. What do you know about them?

A. No, sir; there were not.

Trial Examiner Norwood: Did you ever hear of any price retaliation, meeting a cut price?

The Witness: Yes, sir.

By Mr. Stewart:

Q. While we are hunting for this exhibit—Mr. Walker, what agreement or understanding was there between you and your competitors with reference to maintaining prices announced in your price cards?

A. Absolutely none.

Q. What agreement or understanding was there between you and your competitors with reference to using or maintaining the basing-point method?

A. Absolutely none.

Q. What agreement or understanding is there between you and your competitors which would prevent you from establishing Conshohocken as a basing point if you so desired?

Mr. MacIntyre: I object. The question is improper in form. It calls for speculation and a conclusion as to what might happen in the future if something were done. It does not call for a statement of the facts which have come to this witness' knowledge.

3173 Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: I think he is inquiring as to an existing agreement.

Mr. Stewart: Certainly.

Trial Examiner Norwood: Overruled.

A. There is no agreement, and we would not do that because it would be too expensive.

By Mr. Stewart:

Q. Now, Mr. Walker, I show you Commission's Exhibit 49-A to D, which I assume you are familiar with. It is the memorandum which was made at the time Mr. Frascati visited you.

A. Yes.

Q. And about which you have already testified. I just want to ask you as to whether or not the statements of fact in that memorandum are true and correct.

A. They are.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

By Mr. Stewart:

Q. Mr. Walker, directing your attention to Commission's Exhibits 489-A to H, and 490-A to H, which have reference to your action in connection with the West Philadelphia Electric Supply Company, and a bid which
3174 that company evidently made to the School District of Philadelphia. Will you look at these documents just simply for the purpose of refreshing your recollection as to the incident, or, if you remember it without looking at them, say so.

A. I remember it.

Q. You do remember it?

A. Yes.

Q. All right. Will you state—

A. I might have to refer to it.

Q. Yes.

—what, if any, influence that protest or inquiry from Mr. Booth had to do with your action in canceling your contract with West Philadelphia Electric Company?

A. It had nothing to do with it at all. West Philadelphia Electric Supply Company were a small jobber and religiously cut prices and secured the business that way. After we sold them for three or four years, and they continually—

Trial Examiner Norwood: Just go a little slower, please.

The Witness: I am sorry, sir.

A. (Continuing.) After we had sold them for three or four years, and they continually dragged our market down, we refused to sell them further material, particularly in connection with prices which they would use in bidding to the Government. We felt that a jobber should have
3175 a 5 percent commission in order to handle our goods. This concern would cut that 5 percent to 2, or 2½. All of our other distributors would get us in arms about it, and we had to discontinue or lose the rest of our better distributors in the Philadelphia area. So we cut them off. After three or four months we took them back, after we

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felt we had taught them a lesson not to give up the commission that was allowed them for doing business.

By Mr. Stewart:

Q. In your experience, have you found that that practice is in vogue on Government bids?

A. Yes, sir; it is. In other words, a great many distributor agents feel that they can afford to sell the Government cheaper than private credit risk companies. There is no credit involved. They don't have to pay the bill until they get their money from the Government. And, therefore, there are some distributors who feel they can do business on less than 5 percent, and therefore they cut the price.

Q. You mean they cut the price through the medium of cutting their commission?

A. Cutting their commission; yes, sir.

Q. The price on its face may seem to be the same as anybody else's price, but you have to know what actually takes place; is that correct?

A. That is correct.

3176 Mr. MacIntyre: I object. Mr. Stewart is just simply testifying.

Trial Examiner Norwood: Counsel was sworn when he was admitted to the bar. (Laughter.)

Five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. Stewart:

Q. Will you look at Commission's Exhibit 558, which is a part of a letter written apparently by Leo P. O'Brien to Robert M. Garland, and which has a reference in it to Newt Walker of Walker Brothers.

Mr. MacIntyre: I object to this type of examination. I do not think it is proper for the witness to be shown writings of other people for the purpose of advising, or having them to refresh his memory.

Trial Examiner Norwood: Has he anything to do with that correspondence?

Mr. Stewart: Well, his company is mentioned in it.

Mr. MacIntyre: He did not write it or receive it.

Mr. Stewart: I am asking him—

Trial Examiner Norwood: Is he mentioned in it?

Mr. Stewart: Yes, the company, Walker Company.

Trial Examiner Norwood: I do not think he could use that.

3177 Mr. Witness, please quit looking at that paper there.

The Witness: Yes, sir; excuse me, sir.

Mr. Stewart: How can I ask him whether he knows anything about the matter, I submit.

Trial Examiner Norwood: Bring out the facts relating to it.

Mr. Stewart: I cannot ask him—what I want to ask him is whether or not he knows anything about the matters contained in it.

Mr. MacIntyre: Ask him about the facts without showing him what somebody else has written about it.

Trial Examiner Norwood: Ask him about the facts.

By Mr. Stewart:

Q. What, if anything, do you know about any arrangements or agreements or understandings between the jobbers in New York City about the middle of 1936 with reference to controlling the market in New York?

A. I can only talk about that in general. A jobber, of course, wants to make money on the goods he sells, and, therefore, is interested in maintaining a fair resale price.

Q. What, if anything, did you have to do with that?

3178 A. We always, as far as we can, try and put out a price that will permit the jobber to make some money when he sells the goods. That is in line with good business practice, or else the jobber wouldn't sell our goods.

Q. What I want to know is this: This has to do with a conference in New York City between jobbers—

Mr. MacIntyre (Interposing): Now, that is an improper question.

Mr. Stewart: All right. All right. You cannot tell the man what you want to ask him about, so I won't ask him.

Trial Examiner Norwood: You ask your question. I think that you were all right there.

Mr. Stewart: Certainly I was all right.

Trial Examiner Norwood: I was not that sure.

By Mr. Stewart:

Q. Mr. Walker, this letter refers to a meeting of the Label Conduit manufacturers today at New York Athletic Club, and it speaks of Robert Milford, of Steelduct; Milton Smith, of Enameled Metals; Jay Hawk, of Triangle; Newt Walker, of Walker Brothers, and J. Carroll of National Enamel. What I want to know is, what, if any, connection did your company have with the meeting of these gentlemen.

Mr. MacIntyre: Now, Mr. Newt Walker apparently is the one that attended the meeting. If we are going
3179 to talk about the meeting and his connection with it, apparently he should be brought in, if you want a direct explanation of it.

Trial Examiner Norwood: I think that he may answer that.

If you can answer it from your own knowledge, what do you know about it?

A. My brother is general sales manager of the company, he would naturally be interested in trying to maintain a market which would be satisfactory to our trade. As far as his having made any agreements, I can assure the court that he didn't do it, any more than I would do it.

By Mr. Stewart:

Q. Well, at least you don't know of any?

A. I do not.

Mr. Stewart: Will you mark this for identification, please.

(The document was thereupon marked for identification "Respondents' Exhibit No. 169-A, 169-B, and 169-C.")

By Mr. Stewart:

Q. Mr. Walker, I show you Respondents' Exhibit 169-A, B, and C, ask you to look at it and tell us whether or not you can identify the document (handing document to witness)?

A. (Witness examines document.)

Mr. Stewart: While he is examining that, will
3180 you mark this for identification.

(The document referred to was marked for identification "Respondents' Exhibit No. 170.")

A. May I have the question?

Trial Examiner Norwood: Read it.

(Question read.)

A. I imagine this is—this document is an arrangement between the Conduit Section of NEMA.

Trial Examiner Norwood: Well, wait a moment.

By Mr. Stewart:

Q. Do you know what it is?

Trial Examiner Norwood: Do you know anything about that document of your own knowledge?

The Witness: It looks familiar—it looks familiar, Your Honor; but this document is 9 years old.

Trial Examiner Norwood: I see.

The Witness: There are no signatures to it. I don't wish to disclaim knowledge of it.

Trial Examiner Norwood: Yes.

The Witness: But if I am asked if that is authentic, I can only say it appears to me to be.

By Mr. Stewart:

Q. Authentic as to what? I want to know what it is.

A. Well, it is—

Q. Do you recognize it as to what it purports to be?

3181 Trial Examiner Norwood: Have you ever seen it before?

Mr. Stewart: As a matter of fact, it came out of his files.

The Witness: Yes, sir; Your Honor, it looks familiar; yes, sir. In other words, I am willing to admit that it is.

By Mr. Stewart:

Q. Let me ask you, is it a copy of the Trade Extension Committee Agreement which was made during the time of NEMA?

A. Mr. Stewart, this paper is 9 years old.

Q. Well, if you cannot identify it, just say so.

A. No, sir.

Q. That is all I want.

A. I can't identify it.

Q. All right.

By Mr. Stewart:

Q. Mr. Walker, I show you Respondents' Exhibit 170, which purports to be a letter signed by you, addressed to

Mr. A. Penn Denton; I ask you to look at it and tell us whether or not you authorized the sending of that
3182 letter to Mr. A. Penn Denton?

A. I did.

Q. Did you recognize the writing on the bottom of the document? Do you know whose it is?

A. I am willing to admit that's A. Penn Denton's signature; yes, sir.

Q. Where did that document come from, do you know?

A. I haven't the least idea; I admit to having written it.

Q. Yes.

A. But I don't know where it came from.

Trial Examiner Norwood: Has that been marked?

Mr. Stewart: Yes. Do you want to see it?

Trial Examiner Norwood: What is it?

Mr. Stewart: I offer in evidence Respondents' Exhibit No. 170, and, as I say, I am perfectly willing to detach the other documents attached to it, if it is so desired (handing papers to Mr. MacIntyre).

Mr. MacIntyre: I would like to ask the witness a question about the document (referring to Respondents' Exhibit 170, for identification).

Trial Examiner Norwood: Go ahead.

Mr. Austin: May I make a statement now, Your
3183 Honor, before he asks a question?

Trial Examiner Norwood: Did counsel make a motion or objection or something?

Mr. Austin: Yes, I will make a motion.

I will move that Your Honor instruct Mr. MacIntyre that when he is making these examinations on the voir dire, as he calls it, that he limit his questions to those which go to the authenticity, identity, materiality, relevancy of the document, and that he do not go into cross-examination, as he has already this morning, on another such occasion.

Trial Examiner Norwood: Well, I refrain from instructing counsel; but I shall, in line with my duty, consider and rule upon any motions or objections that are made to any particular question.

Go ahead.

Examination on Voir Dire by Mr. MacIntyre.

Q. Mr. Walker, I am showing you two notes in pencil handwriting attached to Respondents' Exhibit, for identification, 170 (indicating); can you tell me in whose handwriting those notes are?

A. No, sir; I cannot.

Q. When did you first see them?

A. This minute.

Q. Never saw them before?

3184 A. Yes, I did—yesterday afternoon.

Q. You do not know who wrote them?

A. No, sir.

Q. Well, the handwriting—

A. I will—

Mr. Stewart (Interposing): I will stipulate as to who wrote it, if you want to know.

Mr. MacIntyre: Let us go off the record, then.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Make your proposals there.

Mr. Stewart: I will stipulate that the memorandums attached to the document are in the handwriting of Penn Denton; all you have to do is to look at it and you will see, if you look at the bottom, you will see the same man wrote—

Mr. MacIntyre (Interposing): Then it is Mr. Penn Denton at the bottom of the page marked for identification 170?

Mr. Stewart: Yes, that is right.

Mr. MacIntyre: May I inquire of counsel for the Respondents as to what purpose these are offered for? I do not see any foundation laid for them.

3185 Mr. Stewart: What are you talking about?

Mr. MacIntyre: The exhibit, 170. For what is it offered?

Mr. Stewart: The purpose is to show that Mr. Frascati called on Mr. Walker, and asked for certain information, and, as the letter shows, Mr. Walker instructed Mr. Penn Denton to give—

Mr. MacIntyre: No, no.

Mr. Stewart: Well, I don't know how else I am going to tell the Examiner what the purpose is.

Mr. MacIntyre: No need of reading the letter, but you can tell for what purpose it is offered.

Trial Examiner Norwood: Let him finish his description to me, please.

Go ahead.

Mr. Stewart: I have forgotten how far I got.

Will you read it, Miss Reporter?

Trial Examiner Norwood: Read it.

(Last statement by Mr. Stewart read.)

Mr. Stewart (Continuing): —to give Mr. Frascati all minutes of the meetings of the Association, and all correspondence from your office made during the past 12 months.

Trial Examiner Norwood: Yes, yes.

Mr. Stewart: That is certainly material to show that we gave them access to everything, because you hear
3186 a great deal about the investigations that have been made by the Federal Trade Commission beginning in 1936, and this is the visit that Mr. Walker referred to in his memorandum.

Mr. MacIntyre: Well, if they are offered to show that Mr. Walker asked Mr. Denton to let Mr. Frascati look at the minutes over that period of time, then I have no objection to the documents being offered; but I do ask that all four pieces of it be marked as portions of Respondents' Exhibit 170.

Trial Examiner Norwood: I see.

Mr. MacIntyre: Which would make it 170-A to D.

Trial Examiner Norwood: That may be done, and I will ask the Reporter to mark them.

Mr. Stewart: That is quite agreeable to me.

Trial Examiner Norwood: And then as marked they are received in evidence.

RESPONDENTS' EXHIBIT NO. 170-A to 170-D, was offered and received in evidence.

The Witness: Say, Mr. Stewart, I have been asked to identify those. I did not look at those top papers.

By Mr. Stewart:

Q. Well, did—

A. Do you want me to identify that exhibit?

3187 Q. I don't know, but do not bother about it.

A. All right.

Q. I do not know, because I have stipulated as to who

wrote it, and Mr. MacIntyre has accepted that stipulation.

Mr. Stewart: Will you mark these, please.

(The document was thereupon marked for identification "Respondents' Exhibit No. 171-A and 171-B.")

By Mr. Stewart:

Q. Mr. Walker, will you look at Respondents' Exhibit 171-A and B, which purports to be a photostatic copy of the minutes of the Rigid Steel Conduit Association of May 4, 1936, and tell us whether or not that is a copy of the minutes (indicating)?

A. I would think so.

Q. Well, were you present?

A. Yes, sir.

Q. Now, will you look at the statement in the minutes of the action taken by the Association (indicating); do you remember that incident?

A. Yes, sir.

Q. Do the minutes correctly state the situation, and the action?

A. Yes, sir.

Mr. Stewart: Now, I offer the minutes in evidence (referring to Respondents' Exhibit 171-A and B, 3188 and handing papers to Mr. MacIntyre).

Mr. MacIntyre: May I hear the last question?

Trial Examiner Norwood: Read it.

(Last question read.)

Mr. MacIntyre: The minutes relate to a matter that is not material and relevant, Your Honor.

Trial Examiner Norwood: What is this?

Mr. Stewart: The purpose of it is to show and corroborate Mr. Walker in his testimony that the Association was about over the ropes at times, and the minutes certainly show that beyond any question.

Mr. MacIntyre: As I see it, the only thing is it shows they are approving a thousand dollars a month expenditure for certain purposes.

Mr. Stewart: Yes, but it shows certain of them would not go along. That is the point of it. And the rest of them had to shoulder the burden.

Trial Examiner Norwood: Received as marked. The objection is overruled.

RESPONDENTS' EXHIBIT NO. 171-A and 171-B, was offered and received in evidence.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

3189 Mr. Stewart: Will you mark this, please, for identification?

(The document was thereupon marked for identification "Respondents' Exhibit No. 172.")

By Mr. Stewart:

Q. Mr. Walker, I show you Respondents' Exhibit No. 172, which purports to be a letter with your signature, dated June 9, 1936, addressed to certain individuals (indicating).

I ask you to look at it and tell us whether or not you sent that letter to the individuals mentioned on the letter?

A. Yes, sir.

Mr. Stewart: I offer this document in evidence (referring to Respondents' Exhibit 172, and handing same to Mr. MacIntyre).

Mr. MacIntyre: I do not see any reason why this should be offered. It is not related to any material or relevant matter; no foundation laid for it (handing documents to the Trial Examiner). I object to it.

Trial Examiner Norwood: What is the purpose of this (referring to Respondents' Exhibit 172)?

Mr. Stewart: Well, that is entirely in line of acts at the time to prove the difficulties of the Association; it was not a smooth sailing organization by any means.

Trial Examiner Norwood: This is a report of
3190 what happened at this meeting of June 9?

Mr. Stewart: Yes.

Trial Examiner Norwood: Received as marked.

RESPONDENTS' EXHIBIT NO. 172, was offered and received in evidence.

Mr. Stewart: Pardon me one moment, please?

Trial Examiner Norwood: Yes.

Mr. Stewart: Mark this, please.

(The document was thereupon marked for identification "Respondents' Exhibit No. 173.")

By Mr. Stewart:

Q. Mr. Walker, I show you Respondents' Exhibit 173, and ask you what it is, please (handing the document to the witness).

A. It gives our Philadelphia prices as of December 1, '38.

Q. Well, is it what you call a price card?

A. It is taken from a price card for a particular point to which the jobber's compensation has been deducted.

Q. Well, was it issued by your company?

A. Yes, sir.

Mr. Stewart: I offer that in evidence (handing the document to Mr. MacIntyre).

Mr. MacIntyre: I would like to ask the witness a question about this.

Trial Examiner Norwood: Certainly.

3191 *Examination on Voir Dire by Mr. MacIntyre.*

Q. Mr. Walker, is this Respondents' Exhibit 173 merely a copy of your price card 80?

A. Yes, sir.

Q. It is nothing more than it is nothing less?

A. I would rather say our price card 80, if you are going to pin me down. I have explained—

Q. Well—

A. I have explained it is taken from our price card with the various discounts deducted from the card so as to make it plainer for a particular point. For instance, it is marked "Philadelphia Only". Now, whether these columns are exactly the same as our card, if I could compare them I could tell you.

Mr. MacIntyre: If Your Honor please, if this is merely a copy or an interpretation of the price card, I object to it—

Mr. Stewart: Well, as I understand—

Mr. MacIntyre: —because the price card is in evidence.

Mr. Stewart: As I understand what Mr. Walker has testified to it is a special card that they issued in Philadelphia for their own purposes.

Is that not what you understand his testimony to be?

The Witness: Mr. Stewart, you are correct in
3192 what you understood me to say, but I would like to check with our card 80, in view of Mr. MacIntyre's question, as to these columns.

Mr. MacIntyre: The last statement of the witness in explanation of the card I think ought to be made on the record.

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Mr. Stewart: It is agreeable to me.

Mr. MacIntyre: If we are to understand what the card is.

By Mr. Stewart:

Q. Will you explain, then, Mr. Walker, what the card is?

A. The exhibit that I have is a supplemental card to that which we issued to cover the whole country, which is confined to the prices that we quote in the City of Philadelphia, or any other point with a 32-cent freight rate, and includes a charge for trucking, making it a delivered price, as opposed to a price f. o. b. the City of Philadelphia.

Mr. Stewart: Now, with that explanation, are you satisfied? Do you withdraw your objection?

Mr. MacIntyre: No. I just don't see any reason for the card.

3193 Mr. Stewart: Well, the purpose of the offer, of course, is to show that Walker Brothers on their own initiative issued this, and it is their own peculiar situation.

Trial Examiner Norwood: Well, it shows the use of his price card, I suppose.

I will overrule the objection and receive it.

RESPONDENTS' EXHIBIT NO. 173, was offered and received in evidence.

Mr. Stewart: Mark these, please.

(The documents were thereupon marked for identification "Respondents' Exhibit No. 174-A to 174-F.")

By Mr. Stewart:

Q. Mr. Walker, I show you Respondents' Exhibit 174-A, B, C, D, E, and F, ask you to look at the series of documents and state whether or not you are familiar with the matter, whether you handled it.

A. (After examining the documents) Yes, sir; I am familiar with it.

Q. And is that your letter, 174-D—or a copy of it, rather?

A. Yes, sir.

Q. 174-E, is that a copy of your letter?

A. Yes, sir.

Q. And did you receive the document 174-F?

A. I did.

3194 Mr. Stewart: I offer these documents in evidence (handing to Mr. MacIntyre).

(Mr. MacIntyre studies the proffered exhibit.)

Mr. Stewart: Mark these, please.

(The documents were thereupon marked for identification "Respondents' Exhibits Nos. 175-A and 175-B, and 176-A and 176-B.")

Mr. MacIntyre: This entire offer is objected to as incompetent, irrelevant, and immaterial. There is a letter, of course, in this group that was apparently written by the witness, and attached to it in this offer are some other documents which were written by other persons. I assume from the offer that Mr. Stewart is offering these other letters to explain something that Mr. Walker wrote in his letter. Well, of course, if we were to follow that out, then some of the other things that are referred to in the other letters would have to be offered, and the chain would go on ad infinitum. It seems to me the proper way, if there is anything in these letters that would be proper and competent to be received here as testimony, that the witness can give it to us from the witness stand.

Trial Examiner Norwood: What is the purpose of this proffer, Mr. Stewart?

Mr. Stewart: The purpose is to show a refusal on the part of the Rigid Steel Conduit Association to co-
3195 operate with the Eastern Electrical Wholesalers Association in establishing lists—I have forgotten exactly what the subject matter of that letter is—oh, it was the elimination of black enameled conduit.

Mr. MacIntyre: The witness can tell us what he did.

Mr. Stewart: And a recognized list of jobbers.

Mr. MacIntyre: The witness can tell us what he did. Why is it necessary to offer all this correspondence into evidence in order to tell us whether he did something?

Mr. Stewart: Well, it is an act done at the time.

Trial Examiner Norwood: I will reserve the ruling on these until after lunch.

Mr. Gilpatric: May I point out to you, Mr. Examiner, that in the complaint the Respondents are charged with having agreed to having circulated this recognized list of jobbers. This directly goes to that issue in the complaint.

Trial Examiner Norwood: I will reserve the ruling until after the lunch hour.

By Mr. Stewart:

Q. Mr. Walker, I show you Respondents' Exhibit 175-A and B, which purports to be a document of your company, and ask you what it is.

A. It is a form of contract that we used at a certain time. Its date does not seem to be here.

Q. Well—

3196 A. I would say it is quite old.

Q. Well, is it prior to 1937?

A. Maybe.

Q. "Maybe" does not help me. Do you recognize it as a form of contract that was in use prior to 1937?

A. Yes, sir.

Q. Look at Respondents' Exhibit 176-A and 176-B and state when that form of contract was put in use by your company, and as to whether 176-B is a communication of your company to your trade.

A. (After examining the documents.) Yes, sir. This is a contract which we put into effect at the start of the emergency in order that we might reduce the time in which we sold or bound ourselves to deliver goods from a former period of one year, then it was cut to six months, and this was left blank for that purpose.

Q. Now, what agreement or understanding did you have with your competitors before you issued that form of contract?

A. None.

Mr. Stewart: I offer these documents in evidence (handing to Mr. MacIntyre).

Mr. MacIntyre: I would like to ask the witness a question on these.

Trial Examiner Norwood: Go ahead.

Examination on Voir Dire by Mr. MacIntyre.

3197 Q. Now, referring to Respondents' Exhibit, for identification, 175, Mr. Walker, can you tell us when you started the use of that and when you discontinued the use of it?

A. No, sir; not without referring to our files.

Q. And what can you tell us about 176, as to when you started the use of that?

A. January 8, 1941.

Q. January 8, 1941.

A. Yes, sir.
Q. And you are continuing the use of it?
A. Yes, sir; we are.
Mr. MacIntyre: I have no objection to 176.
I do object to 175 because of the vague and indefinite showing as to what period of time that it applies.
Mr. Stewart: Well, it is of no consequence. The witness stated it was in use prior to 1937, and it is simply a form of contract to compare it with the one of Mr. Blake.
Mr. MacIntyre: "Prior to 1937" is a long time.
Mr. Stewart: Of course it is.
Trial Examiner Norwood: I will overrule the objection and receive the two exhibits, 175-A and B, and 176-A and B,
RESPONDENTS' EXHIBITS NOS. 175-A and 175-B and 176-A and 176-B were offered and received in
3198 evidence.

Direct Examination (Continued).

By Mr. Stewart:
Q. Now, Mr. Walker, what connection, if any, was there between the visits of Mr. Frascati in 1936, '37, whatever the dates were, and the visits that Mr. Williams made—he was another Federal Trade Commission investigator—and the dissolution of the Rigid Steel Conduit Association? Do you know of any connection?
A. In the first place, I don't know anything about Mr. Williams.
Q. Well—
A. That is a new name.
Q. What connection, then, was there between Mr. Frascati's visit to you, or to the offices of the Rigid Steel Conduit Association, and the dissolution of the Rigid Steel Conduit Association?
Mr. MacIntyre: I do not object to that question if it is confined to what connection as far as this witness knew and saw. Of course, the connections between those two facts might have arisen as a result of actions or thoughts in the minds of all of his comrades in this—
Mr. Stewart: Nefarious scheme.
Mr. MacIntyre: —Association.
Trial Examiner Norwood: Read the question.
3199 (Question read.)

Trial Examiner Norwood. Answer that from your own knowledge.

A. There wasn't any connection at all, and I point out it was four years between the visit and the abandonment of the Conduit Section.

By Mr. Stewart:

Q. Mr. Walker, will you describe your sales methods of distribution? Your company's, I mean. You do not need to go into any great length. Just tell us how you sell your product and how you distribute it.

A. Our company distributes its products through 165 distributors under consigned stock arrangements.

Q. Do you have any direct—do you make any direct sales?

A. All of our business is handled through jobbers.

Trial Examiner Norwood: Including Government business?

The Witness: Yes, sir.

By Mr. Stewart:

Q. Do you have any salesmen of your own?

A. Oh, yes, but any business that those salesmen sell goes through a jobber and is sold in connection with the jobber. We simply supplement his sales force.

Q. How long has that been your method of doing business?

A. Always. I will take that back. When we 3200 first started to manufacture—I will put it this way: It has always been our method since we started to manufacture, ourselves.

Q. When was that?

A. 1928.

Q. Do you do any advertising?

A. Yes, sir.

Q. In what way?

A. We have an advertising department. We advertise in magazines—locally, nationally.

By Mr. Robison:

Q. Mr. Walker, in connection with your business as a seller of rigid steel conduit, have you endeavored to keep yourself familiar with the statement of the demand for and the total sales of conduits throughout the country?

A. Yes, sir.

Q. Based on your experience in the business and your observation, what do you say as to whether the demand for and total sales of rigid steel conduit have fluctuated or do fluctuate with fluctuation in building activity?

Mr. MacIntyre: I object. It is irrelevant and immaterial.

Trial Examiner Norwood: Overruled.

A. I think that the demand for conduit fluctuates in direct proportion to building activity.

Trial Examiner Norwood: Now, based on your
3201 experience.

The Witness: Yes, sir.

Of course, my experience would be in building construction that I would have to take statistics, for instance, that would be put out by a concern like Dodge. I compare that with our demand as—

Mr. MacIntyre: Just a moment.

If answers of the witness are to be based on other information, such as the census report, or something of the kind, then I submit that in so far as they would be relevant and material they would be the only competent evidence, rather than having interpretations of those given secondhand.

Trial Examiner Norwood: Well, I think the witness said that he would only have to answer by referring to these reports. Is that what he said?

Mr. Stewart: No.

The Witness: Your Honor, in order to gauge as to how the conduit business fluctuates with the building business you would have to take figures put out by a concern somewhat like Dodge.

Trial Examiner Norwood: You do not feel that you can answer that from your own experience?

The Witness: Yes, I can.

Trial Examiner Norwood: Now, tell us what you know about that.

3202 The Witness: I say that conduit fluctuates up and down with the state of building, as it is published by the Dodge reports and other agencies of that kind.

By Mr. Robison:

Q. Do you receive regularly the Dodge reports referred to?

A. Yes, sir.

Q. And you study them?

A. Yes, sir.

Q. What has been your observation and experience in your conduit business as to whether a lowering of the price of rigid steel conduit has been followed by any material increase in the total sales of conduit?

A. No, sir.

Q. You mean that it has not been so followed?

A. I mean that the price of conduit is dependent upon the state of building. If the state of building increases, the tonnage of conduit goes up and the price improves. Conversely—

Q. To come more specifically to my question, have you found that when you lower the price of conduit, the total sales of conduit have increased?

A. No. As the price goes down the tonnage would go off. That is just fundamental.

Q. Now, it is perhaps unnecessary to ask you. You no doubt operate a plant in connection with your production of rigid conduit, do you not?

3203 A. We do.

Q. And does your company have costs that are incurred in connection with the production of conduit and which remain substantially constant under varying rates of production?

Mr. MacIntyre: I object. It calls for irrelevant and immaterial matter.

Trial Examiner Norwood: Objection overruled.

The Witness: Will you read the question again, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. We have costs. I imagine those costs decrease as production increases, as tonnage increases.

By Mr. Robison:

Q. You mean the relative cost per ton decreases: is that what you mean by your answer?

A. Yes.

Trial Examiner Norwood: Per unit?

The Witness: Per unit.

Mr. Robison: Yes.

The Witness: In other words, we have a certain overhead which is absorbed by the larger tonnage or the smaller tonnage. That would, of course, affect the cost of the article.

By Mr. Robison:

3204 Q. And do costs of that nature, which are referred to as fixed costs, constitute a substantial part of the cost of production of conduit under a normal rate of production?

A. Yes, sir.

Q. What is the normal annual--monthly capacity of your plant?

A. 2,250 tons.

Q. I do not understand from your testimony, Mr. Walker, whether your company operates branch offices in various parts of the country or not.

A. We do.

Q. How many branch offices do you have?

A. We operate one in New York. We have a direct representative in Washington. Well, he has his offices in his home. They are the only—with Conshohocken, that is the only two offices—or three offices that we might have directly.

Q. And do you employ manufacturers' agents?

A. We have about a dozen manufacturers' agents located around the country; yes, sir.

Q. Are they widely scattered over the country?

A. Yes, sir.

Q. Does your company produce both black enamel conduit and galvanized conduit?

A. Yes, sir.

3205 Q. Have you found in the sales of those two kinds of conduit that some purchasers prefer to buy the one kind, and other purchasers prefer the other kind?

A. Yes, sir.

Q. What, in general, would you say is chiefly controlling with one purchaser and another in his choice of black enamel or of galvanized?

A. Price, fundamentally, black enamel being 10 or 12 percent cheaper than galvanized.

Q. Aside from that consideration of price, is one kind ordinarily capable of being substituted for the other?

A. It is a question of policy—quality, sir.

Q. I did not understand?

A. It is a question of quality, galvanized being considered having very much longer life, and being better material than black enamel.

Q. Then the choice, you would say, between the two

was a matter of choice on the part of the user as to whether he wants to incur the additional expense for galvanized?

A. To whether he thinks the additional expense is worth the extra that he gets, quality, that he gets, in his conduit. As a rule you will find monumental buildings will have galvanized material. Those which are not monumental will probably use black enamel. In industrial plants you will find those plants where the service is severe will buy galvanized; where it is not so severe they will use black enamel.

3206 Q. Have you found in your experience in this business that buyers of rigid steel conduit will commonly pay any higher price for the conduit produced by your company than for conduit of like type and size produced by the manufacturers?

A. In general, no. There are isolated questions—cases—where our particular material is felt to be better for certain purposes; but even in that case they wouldn't pay any more money than a competitor would offer.

Mr. Robison: That is all I have to ask.

Mr. Stewart: Cross-examine.

Trial Examiner Norwood: Any questions?

Cross-examine him.

Cross-Examination by Mr. MacIntyre.

Q. On that last question, Mr. Walker, is your testimony that buyers of conduit recognize that yours is no better than any of your competitors?

A. I would say that they recognize it is better than some of our competitors. I didn't say it was not better.

Q. They do not recognize—it is your testimony that they do not recognize that your conduit is better than your competitors; is that correct?

A. I don't know—will you read me the question?

Trial Examiner Norwood: Read it.

(Question read.)

3207 A. In some cases they do recognize it is better. In some cases, in competitive cases, they do not; it being thought that galvanized metals, so to speak, is the same by all 13 manufacturers.

Q. In these instances where they do recognize that your conduit is better than the conduit of your competitors, do

you try to get any better price and secure a better price for it than your competitor does?

A. No, in a case like that we try to get our published price. We wouldn't ask for a price better than our published price. We try and get the published price, and not cut our price.

Q. Do you put out any conduit that is of an inferior quality to that put out by your competitors?

A. All conduit has to be made in accordance with the requirements, and subject to the label of the Underwriters Laboratories.

Q. I do not believe that answers the question.

A. Well, it sets a standard in the business.

Mr. MacIntyre: Read the question.

Trial Examiner Norwood: Tell us whether or not you do or do not produce conduit that is inferior to your regular line.

Read the question.

(Question read.)

3208 Mr. Stewart: Well, isn't that a question that is a bit objectionable, since I assume that he is not probably familiar with all the conduit that his competitors put out?

The Witness: Yes, I am, and I am willing to say that we don't make anything inferior to them.

Mr. Stewart: All right.

The Witness: I couldn't—

By Mr. MacIntyre:

Q. In other words, yours is always equal, and in some instances better?

A. Right, sir.

Q. Is that correct?

A. Yes.

Q. In some instances your customer recognizes that it is better?

A. Yes, sir.

Q. Just a few moments ago you told Mr. Robison that conduit fluctuates up and down as the volume of construction business fluctuates. Did you mean there that the volume of the sale,—that is, the production and sale,—of conduit fluctuates? Is that what you had reference to?

A. I mean that as the building business increases our tonnage of conduit increases.

Q. That is, the volume of your production and sales on conduit increases when building construction increases?

3209 A. Yes, sir.

Q. You did not mean to imply by that that your price fluctuates in the same ratio and in the same direction as the volume; is that correct?

A. Our price fluctuates in the same direction, but not in the same ratio; in other words, the price increases usually follow an increase in demand, maybe by one month, two months, or three months, depending on the industry's contracts, the source of supply, pipe.

Q. Did you say, Mr. Walker, that if you and other conduit manufacturers—withdraw that.

Assume, first, Mr. Walker, that there is only a limited amount of money available in this country for construction of buildings in which conduit is used, or can be used; assume that you and other manufacturers of conduit increase prices of conduit, and that producers of all other building materials that are used in the buildings in which that conduit is used also increased the price of such building materials; has it been your experience that when such is done that fewer buildings are constructed through the use of the limited amount of money available for such construction?

Mr. Stewart: Well, now, I object to the question.

A. I couldn't answer the question.

Mr. Stewart: I say, I object to the question; not being intelligible, it assumes facts, and then asks him what
3210 his experience has been as to non-existent facts, I suppose.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: The objection is sustained.

Mr. MacIntyre: The witness has answered the question.

Mr. Stewart: No, he said he could not answer it; couldn't understand it—that is, as I understand him.

The Witness: I said I couldn't answer.

Trial Examiner Norwood: Off the record.

The Witness: I am not a walking encyclopedia.

By Mr. MacIntyre:

Q. Mr. Walker, do you know whether or not the volume of money available for buildings in which rigid steel con-

duit is used, and has been used in the past few years, has been limited?

A. Mr. MacIntyre, I am not here qualifying as an expert in such matters. I can't answer your question.

Q. You do not know?

A. I don't know anything about the volume of money, no.

Q. Do you know whether or not that the prices of other materials in which conduit has been used was in-

3211 creased or held at the same level without change—

Mr. Stewart: I object to that question as not being intelligible.

Mr. MacIntyre: All right; strike that.

By Mr. MacIntyre:

Q. Do you know whether or not that at the time you move the price of conduit up and down, that the prices of building materials which are used in the buildings with conduit also move up and down?

A. I don't know, sir. I am not a close enough student of economic conditions to be able to make an answer to that question.

Trial Examiner Norwood: Recess.

Mr. MacIntyre: I would like to ask one further question.

Trial Examiner Norwood: All right.

By Mr. MacIntyre:

Q. Do you know, then, whether or not that if the total cost of a building in which conduit is used was not increased by virtue of the increase in the price of conduit, it would affect the use of conduit in the building?

Mr. Stewart: Well, now, let me get that question.

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Stewart: I submit that that is utterly un-

3212 intelligible.

Trial Examiner Norwood: Do you understand the question?

Mr. Stewart: Do you, Mr. Examiner? I do not.

Trial Examiner Norwood: Mr. Witness.

The Witness: Well, Your Honor, I assume that what Mr. MacIntyre is trying to ask me—does the price of conduit affect the volume of building construction.

Mr. MacIntyre: No, no.

The Witness: That's narrowed his question down to one building.

By Mr. MacIntyre:

Q. No, I am asking you, if you had the total cost of a building fixed, which could not be changed, and which was not changed by virtue of the increase or decrease in the price of conduit, would that affect the use of the conduit in that building?

Mr. Stewart: I still submit that question is not intelligible. You start out with the assumption that there is no change, and then you make a change somehow or other.

Mr. MacIntyre: Change in conduit, not anything else.

Trial Examiner Norwood: Regardless of the price,—do you use the same amount of conduit in every building?

The Witness: Your Honor, you don't use the same amount of conduit in every building, no.

3213 Trial Examiner Norwood: No, but if the price was higher would they use less conduit?

The Witness: No, they would not.

Trial Examiner Norwood: If it was lower.

The Witness: If the price was such that they could not afford it, they would not build a building, or they would go to a cheaper method of construction, electrical construction.

Trial Examiner Norwood: If the price was lower would they use more conduit?

The Witness: No.

3214 Afternoon Session.

1:45 P. M.

HERVEY S. WALKER, resumed the stand and testified further as follows:

Trial Examiner Norwood: Now, in the matter of this proffer here of 174-A to F, I shall sustain the objection. They are marked for identification, and if they become material hereafter you may offer them again. I cannot see that they serve the Respondents any purpose.

Proceed with the cross-examination.

Cross-Examination (Resumed) by Mr. MacIntyre.

Q. Mr. Walker, is it your testimony that your customers who buy rigid steel conduit from you for installation and for which they pay directly, that they are not influenced at all in their decision to buy that conduit as against some other electrical installation by differences in the cost of it?

3215 A. Mr. MacIntyre, do I understand the question to be as between rigid conduit and some other method of electrical wiring?

3216 By Mr. MacIntyre:

Q. If it is not clear, I will try to make it clearer, Mr. Walker:

Trial Examiner Norwood: Answer the question from that standpoint, yes.

A. Depending upon the character of the building for which the man was purchasing, if he wanted a cheaper installation than rigid conduit would give him, yes, then he would buy a substitute material; in other words, material of a cheaper kind, such as armored cable and non-metallic flexible cable.

By Mr. MacIntyre:

Q. You think the matter of cost would influence him in his decision as to whether he put in one or the other?

A. In this particular case he could wire with armored cable at half the price that he could wire with rigid steel conduit. In other words, he could cut his price of the elec-

trical raceway a hundred percent if he used these other methods—cut it in half.

Q. And if he could not reduce his cost by putting in any of these other raceways any more than he could by putting in conduit, he would be influenced then in putting in conduit.

A. He would be influenced in putting in conduit, because of the cost being the same. There is no question about that. It is a safer and a better method.

Trial Examiner Norwood: What would be the tend-
3217 ency as the price of conduit approached through the lowering process the costs of this cheaper material? Does that increase consumption?

The Witness: Your Honor, you could not make conduit for half of its cost.

Trial Examiner Norwood: I did not ask you if you could. What would be the tendency in case you could?

The Witness: Well, if the cost of conduit could be brought down to the cost of these other materials they would all use conduit.

Trial Examiner Norwood: Yes. Wouldn't the volume tend to increase—

The Witness: Under those conditions, very materially so.

Trial Examiner Norwood: —in proportion to the lowering of the price?

The Witness: If you lower it 50 percent, if you cut it in half, you double your tonnage; yes, sir; maybe more.

By Mr. MacIntyre:

Q. Now, Mr. Walker, Mr. Robison was asking you about these elements of cost. How much of your total cost of a hundred feet of rigid steel conduit, one-half inch, is your raw pipe?

A. Half.

Q. Fifty percent?

A. Yes, sir.

3218 Q. And of the total cost on that same amount of conduit, what is the labor?

A. I couldn't give you that without referring to records.

Q. Well, can you approximate?

A. No, I would rather not.

Q. Would you say that it would be as much as 25 percent of the total?

A. I would rather not say without a record. You see, if I were to answer that question the question of overhead comes in.

Q. Well, you answered Mr. Robison's question about overhead, though. Now, can't you answer the other half of it without a record?

A. No.

Q. You answered his without a record.

A. No, because I say that the difference between our cost of pipe and our finished article plus our profit is another 50 percent. In other words, it is half. Now, how much of that is actual labor, how much is profit, I don't know; how much is overhead, I don't know.

Mr. MacIntyre: Now, if Your Honor please, in the light of that answer, I must move to strike the witness' answer on direct that overhead is a large part of his total cost, because it certainly has no basis for competency in the light of this development on cross.

3219 Mr. Robison: The witness' statement on direct examination, Mr. Examiner, was that the fixed charges together amount to a substantial part of cost.

Mr. MacIntyre: Then, how can we determine what is substantial unless the witness can tell us what part of the total is any one of these elements, or any number of them?

Trial Examiner Norwood: Now, the counsel can specify the pages and lines of any testimony that he thinks should be stricken, and I will consider it in connection with this present testimony.

Mr. MacIntyre: And your ruling on that motion you will make even though the witness isn't present?

Trial Examiner Norwood: I don't consider that the motion is sufficiently specific for me to be able to rule intelligently on it because I don't recall exactly what the witness testified to heretofore. You may renew it and specify the portion you think should be stricken.

By Mr. MacIntyre:

Q. Cost of your raw pipe varies directly with the volume of conduit produced; doesn't it?

Mr. MacIntyre: Strike that whole question.

Trial Examiner Norwood: Delete it.

By Mr. MacIntyre:

Q. The cost of raw pipe for the manufacture of 100 feet of conduit does not vary whether you manufacture
3220 2,000 feet or 2,000 tons in a month or 10,000 tons in a month, does it, Mr. Walker?

A. Yes. I would say that the cost of pipe would vary, depending upon the tonnage purchased, but whether it was 2,000 tons a month or 1800 tons, no. But if you are talking 200 tons as against 2,000 tons, of course, you buy 2,000 tons cheaper.

Q. And if you purchased 1200 tons or 2,000 tons, the cost of raw pipe in the manufacture of a hundred feet of conduit would be the same; wouldn't it?

The Witness: Read the question, please.

Trial Examiner Norwood: Read it.

(Question read.)

A. The cost of pipe to us would depend upon our tonnage but not a tonnage that would vary from week to week. That is about the only way I could answer that question, sir.

By Mr. MacIntyre:

Q. But the cost of raw pipe which is used in the manufacture of a hundred feet of conduit doesn't vary in direct proportion to the increase or decrease in the volume of production; does it?

A. Are you referring to our cost of pipe or the manufacturer's cost of pipe.

Q. Cost of pipe to you in your purchases of it.

The Witness: Might I have the question read?

3221 Trial Examiner Norwood: Read it.

(Question read.)

A. To some extent.

Q. Explain that answer.

A. We, for instance, have tonnage figures in addition to basic prices that we pay for labor, and, therefore, our cost will vary from week to week, depending upon the amount of product which is turned out by a certain number of men.

Q. Will you explain how it would be that if you increased your tonnage in a period of a month from 1,800 to 2,000 tons that the cost of your raw pipe used in that production would be increased by 10 percent?

A. No. The cost of that pipe wouldn't be increased at all. I have testified that we pay a price that is commen-

surate with a round tonnage that we might use. Now, if we cut that tonnage in half we no doubt would pay more money for that pipe per ton.

Q. So that your testimony now is to the effect that the cost of raw pipe does not increase or decrease in direct proportion to the increase or decrease in tons of conduit produced; is that correct?

A. Our cost does not—our cost of pipe does not change as long as we stay within reasonable limits of a monthly output.

Q. Doesn't matter whether it is 1,800 tons a month, or 2,000?

3222 A. No, not a bit of difference.

Q. Now, what about your labor in the production of that pipe—conduit? Is your labor in the manufacturing of a hundred feet of conduit increased in direct proportion to increases or decreases in the number of tons produced?

A. Our labor per ton would stay approximately the same.

Q. Whether you are running a little higher—

A. Whether we are running—

Q. —rate or a lower rate?

A. Yes, within 10 percent, we will say. Now, I am talking directly.

Q. There are other elements of your cost which also remain the same per ton, irrespective of the fact that your production might be 1,800 tons or 2,000 tons per month; is that correct?

A. Well, we are covering a pretty large territory. I don't know just how to answer you. There are a great many elements that enter into a cost.

Q. There would be some, though, that enter into the cost which would remain the same per ton, irrespective of the fact that you produced 1,800 tons or 2,000 tons per month; is that correct?

A. I don't know. Generally speaking, our direct cost would remain about the same, but you—when you take in all elements I am not sure that I can here at the mo-

3223 ment remember all elements that might enter into a cost, except in a general way.

Q. Well, but I asked you if there are some other elements, in addition to these that we have been discussing, which would remain the same per ton, irrespective of whether your production was 1,800 tons or 2,000 tons?

A. Yes, there are some. For instance, underwriter labels. Doesn't make any difference how many we buy, the cost is the same per piece.

Q. And there are still other elements which would remain the same per ton, irrespective of whether your production should be 1,800 tons or 2,000 tons per month; is that correct?

A. I wouldn't care to be any more specific. I can say that in general the difference between making 1,800 tons a month and making 2,000 tons a month wouldn't change per ton, with the exception of the overheads, power bills, and things like that. They would change.

Q. And what percent of your total cost per ton is your power bill?

A. I couldn't tell you.

Q. And what percent of your total cost per ton is your overhead?

A. I couldn't tell you. We make three different products in our factory. Our overhead is divided among the products.

Q. I call your attention, Mr. Walker, to Commis-
3224 sion's Exhibit 61-Z-55 and Respondents' Exhibit 173. Are those duplicates?

A. I would say they are, sir.

Q. Now, will you look at one of them while I ask you some questions about them?

A. Can I just check that card there a minute with this other one here?

(Witness compares exhibits.)

Q. Now, looking at Commission's Exhibit 61-Z-55, will you please tell us what is the difference in the price per hundred feet on one-half inch Walkerized dualkote conduit in carload quantities delivered Philadelphia from stock, as shown on it, from the price shown on your card 80?

Mr. Stewart: Now, what was that question, please?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Stewart: Well, I submit that this is not cross-examination. As Your Honor will recall, Mr. Walker was a witness for the Commission. He could have been asked about all these subjects that he wanted to. Those documents were put in evidence by Mr. MacIntyre. Now, all I did was put the same document in evidence again for the purpose of showing that they had a special card of their

own; for no other purpose. It seems to me it is getting a little far afield.

Trial Examiner Norwood: I think that he is within the proper range of cross-examination. You brought out
3225 the subject.

Mr. MacIntyre: Isn't it possible to have the witness explain some matters that Mr. Stewart put into evidence this morning—

Mr. Stewart: Well, as I understand it, it is already—

Mr. MacIntyre: —and in connection with still other documents that are in evidence?

Trial Examiner Norwood: Objection overruled.

The Witness: Might I have the question, please?

(Question read.)

A. The price shown on our card 80 is f.o.b. Pittsburgh. The price shown on the typewritten card as delivered in Philadelphia includes freight and hauling.

By Mr. MacIntyre:

Q. Includes what freight?

A. Freight from Pittsburgh to Philadelphia, including hauling. Our card 80 offers conduit f.o.b. tracks. There is no hauling included.

Q. In other words, that $5.14 price per hundred feet which appears on Respondents' Exhibit 173 and Commission's Exhibit 61-Z-55 is the Pittsburgh basing-point price plus freight from Pittsburgh to Philadelphia; is that correct?

A. Plus hauling; yes, sir.

Q. What other hauling is included?

3226 A. How is that?

Q. What other hauling are you referring to?

A. Why, to deliver the material from the factory to the—either to the jobber's stock or where it is to be used.

Q. In other words, in addition to the Pittsburgh price plus freight from Pittsburgh to Philadelphia you add also the cost of the hauling from the factory to the job in Philadelphia?

A. If we have to deliver to the job; yes, sir. As a matter of fact, the typewritten sheet shows the extra charge as 10 cents a hundredweight trucking from the railroad station to the job.

Q. What was the purpose in publishing Respondents' Exhibit 173, copy of which is in evidence as Commission's Exhibit 61-Z-55?

A. So that instead of a purchaser of conduit in Philadelphia having to figure from the price card, from the—including the freight and hauling, we go to work and give him a typewritten statement as to what it will cost him, which he uses in preference to the card.

Q. What do the terms "contractor's cost from distributor's warehouse" mean as they appear on that exhibit?

A. If a contractor buys material for a mill shipment we would ship him f.o.b. tracks at a lower price than a distributor can sell to him after he has put the material in his stock and taken it out of his stock. In other words,
3227 there is a warehouse charge included there.

Q. What is meant by the word "contractor" there?

A. As differentiation between a consumer and a distributor.

Q. In other words, that is the cost which he sustains in his payment to the distributor for the conduit?

A. Yes, sir.

Q. And that would include all that you get out of the conduit, all that the railroad gets out of it for hauling it, and all that the wholesaler or jobber gets out of it for handling.

A. Yes, sir.

Q. Is that correct?

A. Yes, sir. And also includes the 5 percent discount which he can deduct for cash, however.

Q. That is purely a cash discount for payment within a particular period.

A. It is, but it is 5 percent, as opposed to a cash discount running anywhere from a half to two percent.

Q. Do you know of any discount different from that 5 percent that prevails in the Rigid Steel Conduit Industry?

A. I have seen distributors quote a cash discount anywhere from nothing to 5 percent.

Q. I am talking about manufacturers of conduit. Do you know anyone who quotes anything different from 5 percent?

A. I can only talk about our own company, sir.
3228 Trial Examiner Norwood: You can talk about anyone you know. He asked if you knew that.

The Witness: Your Honor, I think it is generally un-

derstood that a 5 percent cash discount is allowed—5 percent is allowed for cash. I am not saying that my competitors always do it.

Trial Examiner Norwood: He asked you if you knew of any other discount being charged by manufacturers than the 5 percent discount. Do you know or do you not know? Do you know of any other discount being charged?

Mr. MacIntyre: Cash discount allowed.

Trial Examiner Norwood: Yes.

The Witness: Your Honor, I would say, generally speaking, no.

By Mr. MacIntyre:

Q. You told Mr. Stewart one reason you put out card 83-A, with that number on it, was so that the trade would not get mixed up. Will you please tell us how that you would consider that the trade would get mixed up if you did not put it out with a number on it such as your competitors put on it?

A. Yes. In selling conduit it has been the practice ever since I have been in it to refer to prices as cards. Those cards have always been numbered the same.

Q. By all manufacturers?

A. And when we go in to sell and talk to a con-
3229 tractor or jobber and he asks for a price we tell him it is card No. so and so.

Q. The card with the same number as your competitors. Is that correct?

A. Well, it happens to be either our competitors copy ours or we copy theirs, and the cards are supposed to be identically numbered, although they are not always identically the same.

Q. He would get mixed up if you told him that the prices you were quoting him were those shown on your card of a particular date if it did not have a number on it that your competitors carried; is that correct?

A. If we were to go in and tell a contractor not having card 83 that we would sell him on card 83, then we would be using some competitor's card to quote, which maybe we would not know about. So when we put that card out we put an "A" after it.

Q. What would prevent you from telling your customer that the quotations are on the basis of your card, put out by you on a particular date, without reference to a number?

A. It would be all right. It is just the custom that has sprung up that we have a card number instead of a date.

Q. You do not think that he would get mixed up if you just told him that it was your quotations of a particular date, do you?

3230 A. He probably would. It just makes it simpler the way we do it.

Q. He knows when you tell him that it is card 83 that it is the same quotation that he can get from any manufacturer on a card 83; is that correct?

A. It might be or it might not be.

Q. Well, do you know of any price card put out by your competitors—

A. Any price card that our competitors put out that would be lower than ours we would immediately meet.

Trial Examiner Norwood: All price cards having the same numbers would carry the same prices; would they?

The Witness: Yes, except, Your Honor, they might not carry the same terms. So when we quote we don't use the other fellow's card; we quote our card so and so, which carries its terms with it. And I think it is generally understood in the industry that our terms are not uniform. We have our terms, and the other follows have their terms. We never quote the other fellow's card.

By Mr. MacIntyre:

Q. Mr. Walker, can you cite us any instance where a card of yours bearing a particular number carries any different price quotation in it from the cards of your competitors which bore the same number?

The Witness: It is a pretty broad question. Will 3231 you read it back, please.

(Question read.)

Mr. Stewart: I suggest that counsel furnish Mr. Walker with all the cards of the competitors so he can compare them.

Mr. MacIntyre: Well, I have here exhibits that are in evidence of Mr. Walker's cards and those of his competitors, if he would care to point out to us any difference.

Mr. Stewart: He probably ought to be allowed to take them home, because he will spend a week checking them.

Mr. MacIntyre: I do not want him taking a week checking him. I am asking him for his ready knowledge, if he has any ready knowledge. I do not want him to stay a week.

The Witness: Neither do I wish to. That might go in the record, too.

I would like to point out on card 79, we never issued it; that card 85, as far as I know, it was only followed by one other manufacturer. In spite of the fact that that card was issued last April, we still have it in force.

Trial Examiner Norwood: Now, he was asking you with respect to cards of the same number.

The Witness: Well, I will answer it this way, that if any competitor puts out a lower price than we do, we immediately meet it.

Trial Examiner Norwood: His question was, can you show an instance of where cards of the same number
3232 carry different prices? Do you recall any instance like that?

The Witness: No, I do not recall any instance that I know about.

By Mr. MacIntyre:

Q. Now, this card 85 of yours—I do not think we have it; therefore, it is not in evidence—it was issued on April 24, 1941, wasn't it?

A. Yes, sir.

Q. And it carried an increase in price over the cards which you had previously issued, didn't it?

A. I think it did, sir; yes, sir. My recollection is 5 percent, approximately.

Q. And you have not recalled that card; have you?

A. No, sir.

Q. And you are selling—

A. We are selling our larger sizes under it, yes. We can't maintain the lower sizes.

Q. Now, you told Mr. Stewart about your part in handling this industry matter with Mr. Blake and negotiating with Mr. Blake for him doing work for the industry. Did you or any other representative of the industry in their approaches to Mr. Blake, to your knowledge, suggest to him that you and they would like to ascertain from him whether or not that your use of the basing-point system in quoting prices on conduit would constitute a violation of the Robinson-Patman Act?

3233 A. Never even thought about it, sir. The Pittsburgh method of selling has been in existence ever since I have been in the business. Never raised any question about it at all.

Q. That was not one of these things that scared you to death, then?

A. No, sir; it was not.

Q. You just did not give it a thought.

A. That is right.

Q. You told Mr. Stewart on direct examination that you quoted an f.o.b. mill figure but you had found that your customers would not accept such.

Mr. Stewart: No. I object to that statement.

Trial Examiner Norwood: Ask the witness what he said.

By Mr. MacIntyre:

Q. Do you recall having told him that?

A. I said that our trade wanted a delivered price.

Mr. Stewart: That is quite different from what you say.

By Mr. MacIntyre:

Q. And did not want an f.o.b. mill price; is that correct?

A. I don't know whether I said that. I said they wanted a delivered price, and that we were never asked for a mill price, except by the Government.

Q. But is it your testimony that no customer of 3234 yours did not want an f.o.b. mill price?

A. It is. I never heard of one asking for it.

Q. No customer?

A. Except the Government.

Mr. Stewart: He said that right along.

Q. The Government has frequently asked you for f.o.b. mill prices?

A. Wherever it was to their advantage to use a land-grant form of bill of lading; yes, sir.

Q. And you have stated that when you quoted them f.o.b. mill prices in such instances, when they asked for them, that you did so by equalizing with your competitors. Now, will you please explain to us what you mean by that term?

A. Now, wait a minute, Mr. MacIntyre.

Mr. Stewart: That is not what the witness testified to. He did not say it was f.o.b. mill.

Trial Examiner Norwood: Read the question.

Mr. Stewart: Ask him what he did say.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled. That is what he told me.

A. I mean this in regard to it, that the Government did not ask for a mill price; the Government asked for a delivered price with the understanding that they
3235 would take care of the freight so that they would get the benefit of that saving.

Now, what we would do would be to quote a mill price, and we would agree that we would equalize our price with any price of our competitors regardless of the shipping point.

By Mr. MacIntyre:

Q. You did not in such instances tell the Government that you were making a price independent of your competitors, and possibly lower?

A. We never tell the Government anything when they advertise for a bid. They tell you what to do.

Q. Did they tell you to equalize your price with your competitors?

A. No. They ask you for your price delivered at a certain place, with the understanding that they will furnish the freight along such of the route as the land grant provides for.

Q. And your compliance with that was merely the giving them of a quotation which you considered would equalize with your competitors' quotations on a delivered cost basis to the Government.

A. No.

Q. Is that correct?

A. No. Which we figured would be as low as any of our competitors might make.

Q. And you endeavored to equalize with your com-
3236 petitors on a delivered cost?

A. We saw to it that your competitors did not quote a lower price, because we agreed to meet their price as far as freight was concerned.

Q. Did you attempt to quote lower prices in your equalization with your competitors?

A. No, sir. No, sir.

Q. Where you quoted the Government in such instances which you have just outlined did you ever pay the freight yourself?

A. I would say that we did not. I do not think we ever knew what the freight would amount to. I think that was between the railroad companies and the Federal Government.

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Q. On Government bills of lading.

A. Yes, sir.

Q. You told Mr. Stewart on direct that you can tell what your competitors were going to quote by watching the market. Do you recall that testimony?

A. That I thought we could tell what they were going to do.

Q. Yes. And you meant by that by watching what they were quoting in their price cards in the market; is that correct?

A. No. If the Panama Canal would on Tuesday ask for a price, you immediately get what that price was, compare it with what the market price was, and if it was 10 off we would understand that is what the market would be. Maybe it might be 7½ off, or some other such
3237 figure. That is what we mean by feeling the market.

Q. I show you Commission's Exhibit 716, in which you and a number of your competitors quoted up to the fourth decimal point identically the same prices in terms of cents per foot on conduit to the Navy Department. I am going to ask you how you determine what the market was in the selection of those figures that you submitted to the Government in those bids where you are the same as your competitors.

A. If we are the same as our competitors, we quoted on our card and they quoted on theirs, and those cards being identical would make the prices identical.

Q. So in those instances, then, you determined the market to be what the cards were; is that correct?

A. Yes, sir. Or maybe we did not want the business. This is the 13th of March, 1941. Prices were very strong. There was no use cutting a penny.

Q. In other words, you can get your card price from anybody at any time.

A. We can't fill our orders and have not been able to for months.

Q. The demand being so strong as it is you haven't any difficulty in getting your card prices.

A. Not a bit.

Q. And that has been the case ever since this
3238 strong demand came on with the building up of the defense program.

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. When you quote on a basis of f.o.b. Pittsburgh basing-point price plus freight to destination and also on a basis of f.o.b. Chicago basing-point price plus freight therefrom to destination, you have two territories within which those two quotations apply; is that correct?

Mr. Stewart: Now, I am going to object to this as not being proper cross-examination. I asked him nothing about this. This witness has been on the stand as a Commission witness. He could have been asked, and in fact was asked, about the operation of the basing point and quotations f.o.b. mill. Now, I submit that, having had one chance, my friend should not have the second chance. I therefore object.

Mr. MacIntyre: Is it necessary for me to ask on cross-examination the same questions that Mr. Stewart asked on direct in asking the witness now to explain those answers he gave? I want to approach it from a different angle—the same points.

Mr. Stewart: I certainly asked him nothing about quoting f.o.b. mill, except that he had no agreement or understanding with his competitors as to the use of the method.

Trial Examiner Norwood: Well, these questions 3239 could conceivably go to that point.

Mr. Stewart: Sir?

Trial Examiner Norwood: I think the questions he is asking could conceivably go to that point.

Mr. Stewart: As to whether there was an understanding or agreement between him and his competitors?

Trial Examiner Norwood: It might, yes.

Mr. Stewart: Well, maybe.

Trial Examiner Norwood: Anyway, I feel he is well within the range of cross-examination so far as this witness is concerned.

Mr. Stewart: I would say that would be true had Mr. Walker not been examined in New York on this very subject.

Trial Examiner Norwood: Now, I can't carry all those questions and answers in my head. I think he has a right to do that here.

Mr. Stewart: We went into the subject of quotations, and so on and so forth.

Trial Examiner Norwood: Objection overruled. Go ahead.

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Mr. MacIntyre: May we have the question read?
Trial Examiner Norwood: Read it.
(Question read as follows:
"Q. When you quote on a basis of f.o.b. Pittsburgh basing-point price plus freight to destination and
3240 also on a basis of f.o.b. Chicago basing-point price plus freight therefrom to destination, you have two territories within which those two quotations apply; is that correct?")
Mr. Stewart: Now, you are assuming in your question, I take it, that Mr. Walker quotes f.o.b. Chicago, or are you just asking for his general opinion?
Trial Examiner Norwood: Does the counsel object to the question?
Mr. Stewart: I object to it on the ground that it is not specified as to whether he is asking—the question does not indicate as to whether he is asking him simply for his opinion or his own experience.
Trial Examiner Norwood: Objection overruled.
Answer the question.
A. Well, as a matter of fact, we would not quote two prices to the same point. What we would do if we were asked from a certain point which lay between Pittsburgh and Chicago, we would quote from the base which was the cheaper.
Trial Examiner Norwood: Are you now taking up a new subject?
Mr. MacIntyre: No. This is the same subject. There was an objection as to whether or not it was based on fact.

By Mr. MacIntyre:
3241 Q. Mr. Walker, I am calling your attention to Commission's Exhibit 61-Z-66 and 61-Z-67. Haven't you in your price cards, which are evidenced by those two exhibits, quoted on the basis of the Pittsburgh base and also on the basis of the Chicago base?
Mr. Stewart: I object on the ground that this was a matter that was gone into in the Commission's case on direct, and it is now an attempt to cross-examine his own witness on the same subject.
Trial Examiner Norwood: Objection overruled.
A. We have quoted on both bases.

By Mr. MacIntyre:

Q. On both bases.

A. Yes.

Q. Now, in making a quotation on those two bases to a particular point, say, in the Chicago territory, where the freight from Chicago is lower than it is from Pittsburgh, and also picking another point, say, like Altoona, Pa., to which the freight is lowest or lower from Pittsburgh than it is from Chicago, the two points involved are in well defined separate territories, aren't they?

A. Yes.

Q. And that would be true as to similarly located points based on lowest freight from either of those two bases; is that correct?

3242 Mr. Stewart: I am objecting to this on the ground that it is not proper cross-examination. It is a matter that was gone into by Mr. MacIntyre in his case in chief. He is now undertaking to cross-examine on the same subject as he developed in his own case in chief.

Trial Examiner Norwood: Overruled.

Mr. MacIntyre: Read the last question.

(Question read.)

A. We would quote the lower of the two prices that we had authorized.

By Mr. MacIntyre:

Q. But as to all points in the Pittsburgh territory and which carry a lower freight from Pittsburgh than from Chicago they are in an entirely separate territory from those points which carry a lower freight from Chicago than from Pittsburgh; is that correct?

Mr. Stewart: I object to that. What is the question?

The Witness: I don't know what the question is.

Mr. Stewart: That is argument, I submit.

Trial Examiner Norwood: Now, how does counsel think he objects if he doesn't know what the question is.

Mr. Stewart: I didn't object. Sir?

I say I objected to the question as being argumentative.

3243 Trial Examiner Norwood: Objection overruled.

The Witness: Your Honor, I have already stated that we had two prices, one based on a Pittsburgh base, one on a Chicago base. We quote whichever is the lower of those two, regardless where the point is, and if the

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freight from Chicago to a point would be less than the freight from Pittsburgh to that same point, we quote the Chicago base, although the Chicago base price is $4 a ton higher. The answer to the question is that we quote the lower—the lowest price that we authorize.

Trial Examiner Norwood: The lowest combination price of base plus freight; is that right?

The Witness: Yes, sir; that is it.

By Mr. MacIntyre:

Q. Mr. Newton Walker, I believe you have told us, is sales manager of your company?

A. Yes, sir.

Q. And how long has he held that position?

A. Since 1900.

Q. Since 1900?

A. Yes.

3244 By Mr. MacIntyre:

Q. Did Mr. Newton Walker report to you what took place at the meeting which he attended and which is shown by Commission's Exhibit 558?

A. May I see the exhibit?

Mr. Stewart: That is that Leo P. O'Brien letter. You identified that.

The Witness: I was told I mustn't look at that. (Laughter.)

Can I, Your Honor?

Mr. Stewart: The Examiner permitted you to look at it afterwards. I didn't show it to you.

Trial Examiner Norwood: What is that?

The Witness: Do you remember that letter the other day you told me I shouldn't look at?

Mr. Stewart: That is that letter of Leo P. O'Brien.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

The Witness: Your Honor, I was told not to look at that letter.

Trial Examiner Norwood: Can you answer his question? It doesn't make any difference whether you can or whether you can't.

The Witness: What was the question, please?

3245 Whether my brother reported to me about the let-

ter? Your Honor, how can I answer that when I don't know what the letter says?

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Well, I don't see how he can answer that without looking at the exhibit.

Mr. MacIntyre: I can ask him another question. I will withdraw that. (Laughter.)

By Mr. MacIntyre:

Q. Mr. Walker, what has Mr. Newton Walker reported to you as to what took place at a meeting attended by him in June, 1938, in New York?

A. Mr. Newton Walker doesn't report to me except as one partner would to another. In general, we work closely together, and in general I understand what is going on.

Trial Examiner Norwood: Didn't he tell you about that meeting?

Mr. Stewart: What meeting?

By Mr. MacIntyre:

Q. About any meeting he attended during June, 1938, in New York. Did he report to you on it?

A. If you will refresh my memory with that letter which Your Honor yesterday wouldn't let me see, I will answer your question.

3246 Trial Examiner Norwood: You can't answer it without the letter?

The Witness: I would rather not, Your Honor. Would you want to talk about a letter—

Trial Examiner Norwood: Can you answer it without the letter?

The Witness: Yes, sir; I know what was in the letter.

Trial Examiner Norwood: Well, answer it.

A. No, he did not report to me except in a general way.

By Mr. MacIntyre:

Q. And in what general way did he report?

A. That conditions in New York are extremely bad, he was doing all he could to try and sell conduit at a price that might show some profit, and having a great deal of difficulty.

Q. Did he tell you who attended the meeting with him?

A. No, sir.

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Q. Did he tell you what was said at the meeting?

A. Well, of course, you persist in talking about a certain meeting.

Q. Well, any meeting during the month of June, 1938.

A. Well, I don't know anything about June, 1938, without something to refresh my memory. I say that in general he talks his business affairs over with me, and I in general know what is going on.

3247 Q. Did he tell you who attended all the meetings with him that he held in New York during 1938?

A. I would say not, no.

Q. Did he tell you what was said at all the meetings which he attended with representatives of his competitors in June, 1938, in New York?

A. I couldn't answer, sir. I don't know. I say, in general, yes, I know. You asked me whether he tells me about every meeting that he ever goes to or every time he sees a competitor. He does not do that.

Q. Well, he doesn't tell you as to everything that is said at those meetings?

A. No, sir.

Q. Or action taken at them?

A. I think he would tell me about any action that might have been taken.

Q. That is, as to every act that is committed at the meetings?

A. Oh, no.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Do you have anything?

Mr. Stewart: Just one minute.

(Discussion among counsel.)

Redirect Examination by Mr. Stewart.

3248 Q. Mr. Walker, did Mr. Newton Walker ever report to you that he had entered into any obligation by which he had obligated Walker Brothers to maintain prices in New York?

A. He would not.

Q. I ask you—what was your answer?

A. I said he would not enter into any such thing, and certainly he wouldn't tell me about it if he didn't do it.

Q. The question was, Did he ever tell you?

A. He did not.

Mr. Stewart: That is all.

Trial Examiner Norwood: Thank you, Mr. Walker.

The Witness: Thank you, Your Honor.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. Stewart: As far as I am concerned, sir, I have no further witnesses.

Mr. Gilpatric: Mr. Examiner, we have planned to go ahead with a witness from the Youngstown Sheet & Tube Company tomorrow. Candidly, I didn't expect Mr. Walker's cross-examination and direct examination to be concluded today, so I haven't Mr. Holly here ready to testify today. He will be ready the first thing in the morning to go ahead, unless some other witness is ready.

Trial Examiner Norwood: Do you have any other witnesses? The thing is that I want to be sure and get
3249 through this week. If we could get in a full hour here, you had your witness—

Mr. Gentholts: Mr. Examiner, I contemplated on having Mr. Barton here today but I heard Saturday that he has a very important board meeting today and tomorrow morning, and he will probably be in Washington tomorrow afternoon.

Trial Examiner Norwood: Well, what do counsel suggest?

Mr. Gilpatric: Off the record, Mr. Examiner.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Recess until 9:30 o'clock tomorrow morning.

(Whereupon, at 3:06 o'clock p. m., December 16, 1941, the hearing in the above-entitled matter was adjourned.)

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume II of the Printed Record, being one of 5 volumes of said Printed Record filed on May 13, 1947, in:

Cause No. 8642.

Clayton Mark & Co., *et al.*,

Petitioners,

vs.

Federal Trade Commission,

Respondent,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 20th day of October, A. D. 1948.

(Seal)

Kenneth J. Carrick,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.